

**In the Court of Niranjn Singh, Senior Civil Judge (I), Amb,  
District Una, H.P.**

**Civil Suit No.** : 72-I-2015  
**Registration No.** : 57/2015  
**CNR No.** : HPUN050004032015  
**Date of Institution** : 21.04.2015  
**Date of Decision** : 23.09.2024

Rakesh Babu (deceased) S/o Sh. Ram Roop caste Sood R/o Village  
 Amb Tehsil Amb Distt. Una (HP) through his LRs:-

1. Smt. Kamlesh Sood widow of Sh. Rakesh Babu
2. Rahul Sood Son of Sh. Rakesh Babu  
 both R/o Village and P.O. Amb, Tehsil Amb, Distt. Una (HP)  
 ....Plaintiff

**VERSUS**

Rajan Babu S/o Sh. Ram Roop, Caste Sood, R/o Village Amb, Tehsil  
 Amb, Distt. Una (HP)

.....Defendant

**SUIT FOR DECLARATION**

Present:-

For the Plaintiff : Sh. Anand Sharma, Ld. Adv.,  
 For the Defendant : Sh. Raghav Sood, Ld. Adv.,

**Counter claim No.** : 204-I-2015  
**CNR No.** : HPUN050012802015  
**Date of Presentation** : 01.08.2015  
**Date of Decision** : 23.09.2024

Rajan Babu S/o Sh. Ram Roop, Caste Sood, R/o Village Amb, Tehsil  
 Amb, Distt. Una (HP)

...Counter-claimant.

**Versus**

Rakesh Babu (deceased) S/o Sh. Ram Roop caste Sood R/o Village  
 Amb Tehsil Amb Distt. Una (HP) through his LRs:-

1. Smt. Kamlesh Sood widow of Sh. Rakesh Babu
2. Rahul Sood Son of Sh. Rakesh Babu  
 both R/o Village and P.O. Amb, Tehsil Amb, Distt. Una (HP)  
 ...Non-counter-claimant

**COUNTER CLAIM FOR DECLARATION AND  
PERMANENT PERPETUAL INJUNCTION.**

Present:-

For the Counter claimant : Sh. Raghav Sood, Ld. Adv.,

For the Non-counter claimant : Sh. Anand Sharma , Ld. Adv.,

**JUDGMENT:**

1. This is suit for seeking decree of declaration to the effect that parties are joint owner in possession of land measuring 04-97-23 Hects being earlier the estate of deceased Ram Roop S/o Ram Nath as under:-

A. Land measuring 01-40-64 Hects comprised of khewat no. 436, khatoni no. 508 and khasra nos, 496, 497, 498, 499, 499/1, 500, 501, 544, 546, 805, 1498, 1582, 1589, 1590, 1591, 1646, 1723, 1822, 482, 740 as entered in Jamabandi for the years 2009-10 situated in Village Amb Khas Tehsil Amb Distt Una (HP).

B. Land measuring 0-00-74 Hects being 685 share out of total 24660 shares comes out of land measuring 00-26-43 Hects comprised of khewat no. 543, Khatauni no. 621, khasra nos. 1818, 1820, 1821, 1828 as entered in Jamabandi for the years 2009-10 situated in Village Amb Khas Tehsil Amb Distt. Una (HP).

C. Land measuring 0-13-96 Heets being 52 share out of total 60 shares comes out of land measuring 00-16-11 Hects comprised of khewat no. 437. Khatauni no. 511, khasra nos. 494, 809, 810, 812 as entered in Jamabandi for the years 2009-10 situated in Village Amb Khas Tehsil Amb Distt. Una (HP).

D. Land measuring 01-28-02 Hects being 6401 share out total 6593 shares comes out of land measuring 01-31-86 Hects comprised of khewat no. 189, Khatauni no. 197, khasra nos. 1144, 1146, 1257 and 1145 as entered

in Jamabandi for the years 2005-06 situated in Upmahal Partap Nagar Amb Tehsil Amb Distt. Una (HP).

E. Land measuring 02-11-52 Heets comprised of Khewat No. 1. Khatami no. 1. khasra kittas-23 as entered in Jamabandi for the years 2009-10 situated in Mouja Mughal Tehsil Amb Dist. Una (HP).

F. Land measuring 0-00-69 Hects being 595 share out total 21420 shares comes out of land measuring 00-24-90 Hects comprised of khewat no. 544, Khatauni no. 622, khasra Bos 619, 620, 621, 622, 623, 637, 638 as entered in Jamalsandi for the years 2009-10 situated in Village Amb Khas Tehsil Amb Distt. Una (HP).

G. Land measuring 0-00-35 Hects being 5 share out of total 180 shares comes out of land measuring 00-12-62 Hects comprised of khewat no. 442, Khatauni no. 516, khasra nos. 616, 617, 618, 624, 625 as entered in Jamabandi for the years 2009-10 situated in Village Amb Khas Tehsil Amb Distt. Una (HP).

H. Land measuring 0-00-27 Heets being 52 share out of total 60 shares comes out of land measuring 00-00-32 Hects comprised of khewat no. 207, Khatauni no. 262, khasra no. 3037/813 as entered in Jamabandi for the years 2009-10 situated in Village Amb Khas Tchail Amb Distt. Una (HP).

I. Land measuring 0-01-04 Hects being 52 share out of total 60 shares comes out of land measuring 00-01-20 Hects comprised of khewat no. 211, Khatauni no. 266, khasra no. 3035/808 as entered in Jamabandi for the years 2009-10 situated in Village Amb Khas Tehsil Amb Distt. Una (HP).

J. Land measuring 0-00-90 Hects comprised of khewat no. 306, Khatauni no. 368, khasra no. 34 as

entered in Jamabandi for the years 2009-10 situated in Village Adarsh Nagar Amb Tehsil Amb Distt. Una (HP).

K. Shops along with abadie bearing No. B-IV-1953/381 situated at Pahari Katra Hoshiarpur (Pb.) (hereinafter referred to as the 'suit land') being the successor in-interest and class-1 heirs of deceased Sh. Ram Roop S/o Sh. Ram Nath and the alleged Will dated 08.09.2010 alleged to be executed by Sh. Ram Roop qua his movable and immovable property is a forged, fabricated document and has been procured by using the undue influence by defendant being prominent lawyer in the District over the Sub-Registrar as well as on the witnesses who are closed to him against the wishes of deceased who was on the relevant date of execution of the Will was not capable to execute such document being not in senses on before that particular date and thereafter further the mutation Nos. 901, 1299, 1015 and if any entered or sanctioned qua the property in Village Mughal on the basis of alleged Will dated 08.09.2010 are also against the principle envisaged under the law, result of undue influence used by defendant, at the back of plaintiff in a secret manner, without any information, null & void, the alleged Will dated 08.09.2010 as well as the aforesaid mutations have no effect on the right, title and interest of plaintiff being joint owner in possession with defendant in equal share in the suit property, and consequential suit for issuance of prohibitory injunction restraining the defendant from alienating or encumbering the suit land in any manner, changing the nature, ousting the plaintiff from settled joint possession, and in alternative suit for joint possession U/s 5, 34 and 38 of the specific Relief Act.

2. The case of the plaintiff in brief is that the suit land was earlier owned and possessed by deceased Sh Ram Roop and after his death on 21-08-2013, the suit land i.e. movable and immovable is jointly owned and possessed by parties being class-1 heirs in equal share, as Sh. Ram Roop died intestate, the pedigree table as under:-

Roda Mal

Ramji Dass

Ram Nath

Ram Roop

Rajan Babu

Rakesh Babu

3. During the life time of deceased Sh. Ram Roop, he remained with plaintiff being the obedient son fulfilled all the necessities of life in extreme old age of deceased. The deceased Ram Roop having cloth shops and further he was having business of cigarette and Biri and the plaintiff from his teenage started work with his father by abandoning his higher education. The ration card of the deceased and plaintiff remain joint, as the deceased was headman of the family of the plaintiff, even the land line phone bearing No. 01976-260273 is still in working condition in the house of plaintiff. The defendant by getting higher education upto L.L.B. started his practice as an advocate and at the same time separated himself from his father as he has separate lodging and boarding. Sh Ram Roop never intended to execute any will in favour of defendant alone by depriving the plaintiff as the deceased was having no ill-will or grudge with the plaintiff in any manner and deceased was having much love and affection towards plaintiff as he helped his father in all respect.

4. In the last week of July, 2009 the deceased Sh. Ram Roop who was more than 88 years and was known patient of Parkinson's disease and due to old age he fell down in the bathroom and sustained head injuries alongwith other injuries and thereafter

he lost his senses and he remain admitted in Patel Hospital, Jalandhar (Pb) and after that deceased remained bed ridden due to aforesaid injuries and after that accident he was not in position to recognize any person and even was unable to take the call of nature by his own and ultimately on 21.08.2013 the father of parties expired, due to Parkinson's disease and thereafter by an accident the condition and health of deceased Sh. Ram Roop was not remain good and till his last breath he remained bed ridden without any proper senses and since the year 2009 he is not in the position to understand any thing whatsoever.

5. After the death, the defendant started extending illegal threats by proclaiming that he is the absolute owner of the movable and immovable property left by Sh. Ram Roop on the basis of some Will and further extended threats to alienate whole of suit property, change the nature by taking forcible possession, the plaintiff remain in search of the alleged Will alleged to executed in favour of defendant but the defendant kept the secret about the Will. One case titled as "Agya Watti V/s Ram Roop is pending before the Hon'ble High Court of Punjab & Haryana registered as RSA No. 383 of 1985 qua property of Hoshiarpur (Pb) in that case the defendant moved an application to bring him as legal representative of deceased Ram Roop on the basis of Will in a very secret manner. Actually the plaintiff always since beginning remain touch with that case and after knowing about the application moved by the defendant, the plaintiff also moved an application to bring him on record as legal representative before the Hon'ble High Court of Punjab & Haryana and as per order, parties are allowed to be brought on record as legal representative of deceased Sh Ram Roop. Only the plaintiff came to know before the Hon'ble High Court about the alleged Will dated 08.09.2010 alleged to be executed by Sh Ram Roop..

6. Sh. Ram Roop father of the parties neither willing nor had executed any alleged Will dated 08.09.2010 and alleged Will dated 08.09.2010 to be executed by Sh Ram Roop qua his movable and immovable property is a forged and fabricated document and has been procured by using undue influence by defendant being prominent advocate in the District over the Sub Registrar as well as on the witnesses who were close to him against the wishes of deceased, who was since the year 2009, stated supra, was not capable to execute such document being not in proper senses on before that particular date and thereafter he was even not capable to understand any thing and even was not in a position to recognize any person and further the mutation Nos. 901, 1299 and 1015 entered and sanctioned and if any entered or sanctioned qua the property of village Mughal on the basis of alleged Will dated 08.09.2010 are also against the provisions envisaged under the law, result of undue influence used by defendant, at the back of plaintiff in a secret manner, without information, null & void, the alleged Will dated 08.09.2010 as well as aforesaid mutations have no effect on the right, title and interest of plaintiff being joint owner in possession with defendant in equal share being class-I heirs in the suit land.

7. The defendant is requested Number of times to admit the genuine claim of plaintiff, by ignoring the alleged forged and fabricated Will dated 08.09.2010 and not to oust the plaintiff from joint possession of the suit land and not encumber or alienate the suit land in any manner but the defendant who is very much adamant and have finally refused to admit the genuine claim of the plaintiff, when the defendant after the lapse of considerable time got entered and sanctioned the mutation in the month of March, 2015, otherwise earlier the defendant remain assuring the plaintiff that he will not get implement the alleged forged and fabricated Will.

8. The cause of action accrued to the plaintiff firstly when the plaintiff came to know about the alleged Will dated 08.09.2010 when the defendant moved an application to brought him on record as legal representative of deceased Sh Ram Roop on the basis of Will before the Hon'ble High Court of Punjab & Haryana in RSA No. 383 of 1995 after the death of Sh Ram Roop, lastly in the month of March, 2015 when the defendant succeeded in get sanctioning the mutation on the basis of alleged forged and fabricated Will by ignoring the lawful and genuine wishes of the plaintiff, hence this suit. With these averments, the present suit is filed.

9. The defendant resisted and contested the suit of plaintiff by filing written statement. The defendant admitted that the suit land were owned and possessed by the deceased Ram Roop. However, it is wrong and denied that the said moveable and immoveable properties is jointly owned and possessed by the parties on the allegations of the parties being Class-I heirs and in equal share on the allegations that Ram Roop had died intestate. The plaintiff has purposely not disclosed the facts that deceased Ram Roop had left a registered Will dated 08.09.2010, by virtue of which the deceased Ram Roop being the testator in his sound disposing mind in his free volition and out of natural love and affection for the defendant and his family members has bequeathed the moveable and immoveable assets which at that juncture was in the name of the testator except those which has been bequeathed to the plaintiff and the description of which has been manifested in the registered will dated 08.09.2010. The Sh. Ram Roop has already created sufficient assets by contributing financially to the making of the assets in favour and in the name of the plaintiff. The Will is in the knowledge of the plaintiff which he has purposely not disclosed of the said fact before the Ld. Court and it is evident that the plaintiff is trying to mislead this Ld. Court on the basis of making averments which are fictional and the suit as such deserve to be



dismissed. So far as the pedigree table is concerned, the same is a matter of record. However, it is submitted that the property in question are the properties of Sh. Ram Roop which he is entitled to Will and has rightly willed in favour of the parties in the proportions mentioned in the registered Will dated 08.09.2010. Rest of the allegations so made in this para is totally wrong and incorrect and denied.

10. To the contrary plaintiff has never aided or rendered any assistance to the Ram Roop in business. The plaintiff was working as an post office and Bank agent and was having no constant source of income and had been provided financial help by his father Sh. Ram Roop, who had contributed financially to the making of the buildings, where the plaintiff is staying as also creation of other immoveable assets by financial contribution and subsequent to which Sh. Ram Roop helped the plaintiff to raise abadi and shops for the purpose of having constant and continuous income. So far as the defendant is concerned, the defendant was gainfully employed in profession and the defendant contributed financially to meet out the needs of his father Ram Roop. So far as the allegations that the plaintiff worked jointly with his father is concerned, it is wrong. Sh. Ram Roop was having his individual shop and the plaintiff was having his other individual vocation of post office and bank agent and has been generating income from this vocation. Regarding the allegations that the Ration card of the deceased Ram Roop and the plaintiff was joint, it is submitted that it was at the behest of the defendant only that the Ration Card was made since the plaintiff was the younger brother of the defendant and the defendant did not want that the plaintiff should have any inferiority complex. Though the Ration Card was made jointly, the father of the parties namely Sh. Ram Roop was living with the defendant and his family members since 1993 after the demise of his wife Smt. Shakuntla Devi, who was the mother of the parties. Ram Roop was being

looked after by the defendant and his wife and two sons and all his needs were being met by the defendant through the personal contribution of the defendant. So far as the allegations regarding the love and affection to the sons is concerned, it is clarified that Ram Roop had affection for both sons, but on account of the fact that the plaintiff has been bestowed with sufficient immovable valuable assets created in favour and in his name by his father during his lifetime through separate deed is exclusively in his name. During this period when Ram Roop was financially helping the plaintiff and the defendant was gainfully employed and had sufficient income from his profession, Sh. Roop Ram helped the plaintiff and his family members financially and had rendered them stable platform to have luxurious life. The plaintiff and his wife and son had disrespected and never cared to provide any services to the deceased Sh. Ram Roop during his lifetime and Ram Roop being perturbed by such immoral and unethical behaviour of his son i.e, plaintiff had opted to live with the defendant and his family who had been constantly caring and rendering him all the respect love and affection which is required by a parent in his old age. Sh. Ram Roop has made a last Will and testament in his sound disposing state of mind out of his free volition in favour of the defendant due to love and affection as also in lieu of service rendered by the defendant and his family members. On the basis of the registered Will dated 8.09.2010, the defendant is the owner in possession with respect to the immoveable assets of Ram Roop acquitted to him vide registered will as also he is entitled to the movable assets by virtue of the Will which has been acted upon and which was within the knowledge of the plaintiff. It is clarified in this regard that the father of the parties was an independent man and during the life time of his wife he lived with his wife. After the death of wife of Ram Roop, Sh. Ram Roop on account of mal-practice and mis-treatment meted out to him by the plaintiff and his family members, he lived with the defendant and his family members till his last breath. It is

further wrong and denied that Ram Roop never intended to execute any Will in favour of the defendant as alleged..

11. It is also denied that Sh. Ram Roop suffered from Parkinson's disease. However, it is denied that Sh. Ram Roop had lost his senses on allegedly sustaining head injury as alleged or that Sh. Ram Roop remained bed ridden due to the aforesaid injuries and that after such injuries he was not in position to recognize any person or unable to make the call of nature as alleged. Sh Ram Roop was having all mental faculties intact till his last breath and was alert and possessing complete mental faculties, and decisive abilities. The Will dated 08.09.2010 was also made by Ram Roop at his own behest in his sound disposing state of mind on account of natural love and affection and the services rendered by the defendant, the said will was registered to get in the presence of marginal witnesses before Sub Registrar Amb. It is clarified that Ram Roop died on 21.08.2013 and prior to his death, Sh. Ram Roop was very active, and he was alert and was possessed of good mental faculties. It is vehemently denied that that Sh. Ram Roop remained bedridden without any proper senses since the year 2009. It is pertinent to state here that Sh. Ram Roop was recovered from the minor physical injury and had started managing and dealing with his estate. It is significant to mention here that Sh. Ram Roop after the execution and registration of the will during his lifetime had also sold his land vide registered sale deed dated 28.9.2012 to the knowledge of the plaintiff and had been receiving rent of the Post Office building to the knowledge of the plaintiff. She Ram Roop during his lifetime has also operated a saving bank account at State bank of India Branch Amb and had also made withdrawal of Rs. 107,000/- on 02.10.2011 and the contrary allegations of the plaintiff qua the loss of senses and abilities are utterly wrong and incorrect and bundle of lies.

12. It is categorically denied that after the death of Ram Roop, defendant started extending threats as alleged by proclaiming that he wanted to alienate the suit land and property and change the nature of the same. No such threats were held out and the allegations are baseless. So far as the allegations that the defendant being the absolute owner of the moveable and immovable assets left by Sh. Ram Roop on the basis of the Will, it is already clarified that Sh. Ram Roop had executed a Will dated 8.09.2010 favour of the defendant, out of natural love and affection and in lieu of services rendered to him by the defendant and his family members and the plaintiff was aware about making of such Will as also the fact that the defendant was in possession of the immovable assets of Ram Roop during the life time of Ram Roop. The defendant was maintaining and looking after the immovable property of Ram Roop at the behest of Sh. Ram Roop. Subsequently on the death of Ram Roop and on the basis of the Will the defendant is the owner in possession with respect to such immovable and moveable property. So far as the case titled as Agyawati Vs. Ram Roop pending before the Hon'ble High Court of Punjab and Haryana registered as RSA No. 383 of 1985 qua the property of Hoshiarpur (Punjab) is concerned, the same is also property of Ram Roop to which the defendant is entitled on the basis of the same being bequeathed to him by Sh. Ram Roop. The application was made rightly by the defendant on the strength of the Will in his favour. So far as the alleged application made by the plaintiff to bring him on record as a legal representative before the Hon'ble High Court of Punjab and Haryana is concerned, the same is within the knowledge of the plaintiff. So far as the allegations that the plaintiff came to know about the Will dated 08.09.2010 executed by Sh. Ram Roop only when the application was moved before the Hon'ble High Court of Punjab & Haryana is concerned, it is clarified that the allegations are wrong, the plaintiff was in the knowledge of the said Will dated 08.09.2010 since the plaintiff was

informed about making of such Will by his father during his lifetime to which the plaintiff had also acquiesced. After the death of Sh. Ram Roop the plaintiff had raised his claim before the superintendent of posts Una for the transference of the landlordship of the ground floor of the three-storey building bequeathed to him in terms of registered will dated 08-09-2010 for receiving the rent from the Department of posts Una. The superintendent of Post Offices, Una on 06.01-2014 had pursuant to the production of the certified copy of registered will, the plaintiff has been receiving the rents of the ground floor from the Department of posts Una since then. The defendant has obtained the pertinent documents from the office of the superintendent of posts by filing application under the Right to information act. The plaintiff has deliberately concealed and withheld this crucial fact from the scrutiny of this Hon'ble Court. The plaintiff cannot approbate and reprobate in one sequence. Ram Roop during his life time and since Ram Roop had not given any financial help to the defendant, Sh. Ram Roop had made a Will dated 8.9.2010 in his sound state of mind, out of natural love and affection and in lieu of services rendered in favour of the defendant rightly.

13. It is categorically denied that father of the parties was neither willing, nor had executed a Will dated 8.09.2010 or that the same is a fraudulent and fabricated document made on the basis of using undue influence. The other allegations that since 2009 Ram Roop was not capable of execution of any document and more precisely such document is concerned, being not in proper senses as alleged is wrong and denied. It is further denied that Ram Roop was not capable of knowing anything or did not recognize any persons as alleged. So far as the Mutation Nos. 901, 1299 and 1015 are concerned and have rightly been made and effected. It is further denied that the plaintiff is the joint owner in possession with the defendant in equal shares with respect to the suit land. It is

necessary to mention here that the plaintiff in the month of December 2014 had filed a civil suit against the state of H.P. and others in respect of property comprising of khasra No. 574 and khasra No.1853 and 1854. The said properties had been succeeded by the plaintiff on the basis of registered will dated 08.09.2010 and the plaintiff knowingly and willfully made false statements by way of pleadings alleging himself to be proprietor and inhabitant of the village. Sh. Ram Roop had constructed both the buildings and the three-storey building existing over khasra No.574 in the ground floor of the three-storey building the sub-post office Amb is functioning and the said ground floor premises was leased by the Sh. Ram Roop. Whereas in the two-storey building situated over khasra No. 1853, 1854, one shop existing in the ground floor was rented out to the Himurja Project Una by Sh. Ram Roop and the plaintiff has been running his office of bank agent and Post Office agent in the other part of the said two-storey building. The plaintiff knowingly and intentionally made false pleadings in the said suit despite the knowledge of the registered will dated 08.09.2010 on the strength of which the plaintiff has succeeded the said properties.

14. It is categorically denied that any alleged request was made by the defendant to admit the alleged claim of the plaintiff by way of allegedly ignoring the Will dated 08.09.2010. It is further denied that the plaintiff is in alleged joint possession of the suit land or that the plaintiff has refused to admit the alleged claim of the plaintiff, It is further denied that the defendant had at any point of time allegedly assured the plaintiff that he would not get implementation of the Will as alleged.

15. It is categorically denied that the cause of action accrued in favour of the plaintiff and plaintiff firstly came to know about the Will dated 08.09.2010 when defendant moved an application to be brought on record as legal representatives in RSA

No. 383 of 1985 before the Hon'ble High Court of Punjab and Haryana and lastly in March, 2015 when allegedly the defendant had got the mutation sanctioned on the basis of Will. It is clarified in this regard that the plaintiff was in knowledge of the Will dated 8.09.2010 and was duly aware of such Will and the present suit has been filed on account of greed and malice and on the basis of second thoughts on account of which concocted and false allegations have been made by the plaintiff for filing the suit. Thereafter, after denying all the submissions of plaintiff, the defendant prayed for dismissal of suit..

16. Thereafter, replication to the written statement was filed, in which the Plaintiff denied all the defence taken by the defendant and reasserted his whole claim.

17. The defendant/counter claimant also filed Counter Claim for Declaration to the effect that Defendant/Counter claimant Rajan babu S/o Sh. Ram Roop is owner in possession of land measuring 00-28-99 hecets (7 Kanal 11 Marlas) out of total land measuring 00-45-60 hecets comprised of khewat No. 439 khatoni No. 513 khasra No. 1715 as entered in Jamabandi for the year 2009-2010 situated in village Amb Khas Tehsil Amb Distt Una HP (hereinafter referred as 'suit land in counter claim') being the legatee/successor on the basis of registered will dated 08.09.2010 executed by Late Sh. Ram Roop. The revenue entries reflecting the ownership and possession of the plaintiff/respondent over the 'suit land in counter claim' are wrong illegal void unauthorisedly made, against the fundamental principles of natural justice, at the back of the predecessor in interest of the defendant and are ineffective and inconsequential as against the rights of the counter claimant. And also sought consequential relief of decree of permanent injunction restraining the plaintiff from changing the nature and character, raising any sort of construction exploiting any natural resources, cutting removing any trees, alienating or encumbering the 'suit land in

counter claim' in any manner till partition in the alternative decree for joint possession. The defendant/counter claimant also sought decree of recovery of Rs.16,72,301/- along with interest at the rate of 9% per annum from the date of the filing of the counter claim alongwith pendent lite and future interest till realization.

18. It is stated in the counter claim that Land measuring comprising of 7 kanals 17 marlas having khasra Nos. 3033, 3034, 3035 was coming in ownership and possession of one Gurbax Singh S/o Nandu. The said Gurbax Singh S/o Nandu had sold aforementioned parcel of land vide registered sale deed dated 21-3-1973 in favour of Daulat Ram S/o Thunia Ram R/o Village Mughal Tehsil Amb Distt Una H.P for valuable consideration of Rs. 3000/- and the mutation No. 2728 the basis of the aforesaid sale deed entered and sanctioned in the revenue record. Thereafter the aforesaid Daulat Ram had entered into registered deed of exchange with Late Sh Ram Roop the predecessor in interest of the counter claimant and the area of 7 Kanal 17 marlas comprised of khasra No.s 3033, 3034, 3035 situated at village Amb Khas was exchanged on the basis of registered exchange deed dated 04.04.1973 with the land comprised of 9 kanals 18 marlas situated at Village Mughal Tehsil Amb District Una H.P. The mutation No. 2735 on the basis of aforesaid registered deed of exchange was also entered and sanctioned.

19. That in this manner the predecessor in interest of the counter claimant/defendant Sh. Ram Roop has become absolute owner in possession of land measuring 7 Kanal 17 marlas comprised of khasra Nos. 3033, 3034, 3035 situated at village Amb Khas..

20. Sh. Ram Roop after the death of his wife Smt Shakuntla Devi was being looked after by the defendant and his wife Smt. Madhu and two sons Raghav and Madhav and was also staying in the residential house of the defendant, where the defendant and his family members were meeting the personal requirements of Ram



Roop and also seeing to his comfortable lodging and boarding and meeting but all the needs and requirements with respect to the necessities of Sh. Ram Roop and Sh. Ram Roop out of natural love and affection and in lieu of the service rendered by the defendant and his family members in his sound disposing mind and out of his free will had executed and got registered a Will in favour of the defendant on 08.09.2010 in the presence of the marginal witnesses at village Amb before Sub Registrar Amb, whereby Sh. Ram Roop had bequeathed the assets comprising of moveable and immoveable in favour of the defendant except those which have been given to the plaintiff/respondent recited in the registered will dated 08.09.2010. It was further recited in the aforesaid registered will that all the assets forming the part of estate of Sh Ram Roop except those which have been bequeathed to the plaintiff/respondent shall be succeeded by the counter claimant/defendant after the death of Sh. Ram Roop.

21. Sh. Ram Roop had expired on 21.08.2013 and after his death, his estate in accordance with the registered will including suit land in counter claim is succeeded by defendant/counter claimant. Thus after the death of the predecessor in interest Sh. Ram Roop and on the basis of the registered will dated 08.09.2010, the counter claimant/defendant has become owner in possession of the suit land in counter claim along with other land mentioned in the will.

22. The respondent/plaintiff succeeded in bringing his name in the revenue record in connivance with revenue authorities without any right or title at the back of the predecessor in interest of the counter claimant in the subsequent Jamabandi for the wear 1976-1977 in respect of khasara Nos. 3033, 3034, 3035 and area comprise of 7 kanal 11 marlas. The plaintiff/respondent has no right title, interest whatsoever in the area comprise of 7 kanal 11 marlas i.e. the suit land. The insertion of the name of the

plaintiff/respondent Rakesh Babu in the Jamabandi for the year 1976-1977 is wrong, illegal, void unauthorisedly made without following any procedure and fundamental provisions of the law for the time being in force in force without any order. The plaintiff/respondent never came in possession of the suit land in counter claim in any capacity nor does the plaintiff/respondent has any right title interest whatsoever in the suit land in counter claim.

23. In the month of May 2014, plaintiff/respondent started asserting his exclusive right over the suit land in counter claim and denying the right and title of the counter claimant over the suit land in counter claim. The plaintiff/respondent further started threatened the counter claimant that he will alienate and encumber the suit land in counter claim and further will exploit the natural resources of the suit land counter claim by cutting and removing the valuable trees. The counter claimant was flabbergasted upon seeing such dubious actions of the plaintiff and started making searches in the revenue record and discovered the fact that plaintiff/respondent had without any right title or Interest had surreptitiously illegally unauthorisedly got inserted his name in the revenue record qua ownership and possession of the suit land in counter claim in his favour in the Jamabandi for the 1976-1977 and the entries depicting the status of the plaintiff/respondent as owner in possession are patently wrong illegal void-ab-intio. The plaintiff was having no right title or interest whatsoever in the suit land in counter claim in any capacity and there is no order of any competent authority or procedure was ever followed while incorporating the name of the plaintiff in the revenue record of the suit land in counter claim.

24. During the course of the inspection of the records it was further revealed that a fictitious entry depicting the status of plaintiff/respondent as Gair Marusi over khasra No. 3035. Such entry in the revenue record of Jamabandi for the year 1971- 1972 qua khasra no. 3035 depicting the status of the plaintiff as Gair Marusi

was patently illegal on the face of record. The erstwhile owner Gurbax Singh s/o Nandu had also filed a suit for permanent injunction against the plaintiff/respondent Rakesh Babu before the Sub Judge Una civil suit no. 369/71 titled as "Gurbax Singh versus Rakesh Babu" in respect of Khasra No. 3035 comprising of 19 marlas out of suit land in counter claim and the same was decreed in favour of Gurbax Singh on 06.06.1972 and the respondent/plaintiff was permanently restrained from interfering in the peaceful possession of Plaintiff Gurbax Singh. The said judgment and decree has attained finality. The said erstwhile owner Gurbax Singh S/o Nandu had also filed execution petition on the strength of the judgment and decree dated 06.06.1972 and in the course of execution proceedings the warrant of execution was also executed against the respondent/plaintiff.

25. Thereafter the village came under settlement operation and the settlement field staff while converting the measurement into metric system had formulated new Khasra No. of the suit land in counter claim i.e. 1715 by merging the area of old khasra No.s 3033, 3034, 3035 into the newly formulated No. along with other khasra No.s and have wrongly and illegally shown the exclusive ownership and possession of the plaintiff/respondent over the area comprise of 7 kanal 11 marlas of suit land against the actual and factual position at the spot. It would be relevant to state here that the counter claimant has claimed the area of 7 kanals 11 marlas which comes out 0-28-99 hecets from the total area of the khasra No. 1715 i.e. 00-45-60 hecets. Thus the plaintiff has no right title or interest whatsoever in old khasra Nos. 3033, 3034 3035 which had been merged in khasra No. 1715 and over the area of 0-28-99 hecets (7 kanals 11 marlas) out of the total area 00-45-60 hecets of khasra No. 1715. All the subsequent revenue entries in the name of the plaintiff/respondent in the revenue record are wrong, illegal, baseless, and void and are ineffective and inconsequential as

against the rights of the counter claimant. The counter claimant thereafter upon the discovery of the aforesaid facts had also moved an application for the correction of the entries by way of fard Badar before the Tehsildar Amb. The learned tehsildar Amb had forwarded the said application for report and enquiry and upon the receipt of the report from the revenue field agency and upon going through the entire facts and record had ordered the correction of the wrong entries existing in the name of plaintiff Rakesh Babu. The plaintiff after the passing of the order by the Tehsildar Amb over the correction application moved by the counter claimant had filed application for transfer of the correction application before the District Collector Una. The District Collector Una without going through the order passed by the Tehsildar Amb vide its order dated 09.04.2015 had transferred the already adjudicated and culminated correction application to the Tehsildar Una..

26. Sh. Ram Roop was exclusively and solely running the business as Cloth merchant as well as the stockiest of the tobacco products and also receiving income as rent from his properties as well as from the property/building existing over Khasra No. 574 as well as Khasra Nos. 1853, 1854 situated in village Amb Khas. The ground floor of three- storey building existing over Khasra No.574 was rented to the post office Amb. It would be relevant state here that the plaintiff upon the demise of Sh. Ram Roop was having active knowledge of the execution of the registered will dated 08.09.2010 and on 06.01.2014 had submitted the copy of the registered will of Sh. Ram Roop before the Superintendent of Post offices Una for the exclusive change of Land-Lordship ownership in his name in accordance with the registered will and had also received the rents up till June 2015. In this manner the plaintiff acquiesced and acted upon the registered will and had obtained the benefits of the estate which has been bequeathed to him in the registered will dated 08.09.2010. It is pertinent to state here that a

shop situated in building comprised of khasra No. 1853 and 1854 was rented to the authorities of Himurja Project by Sh. Ram Roop during his lifetime. The plaintiff/respondent has not contributed in the investments and savings of Late Sh Ram Roop. Sh. Ram Roop during his lifetime had also invested his income in the fixed deposit receipts (FDR's) obtained from the banks mentioned above is as under:- (i). FDR of State Bank Of India A/C No. 30820797532, (II). FDR of PUNJAB NATIONAL BANK A/c no. 16792, (iii) FDR of KCC Bank Amb A/C No. 222239.

27. Sh. Ram Roop during his lifetime had been exclusively receiving the interest from the aforesaid fixed deposit receipts and had been paying income tax individually thereon. Thus Sh. Ram Roop was the exclusive owner of the money under the aforementioned fixed deposits. Sh. Ram Roop had made explicit recitation in his registered will dated 08.09.2010 with respect to the distribution of the liquidated assets/FDR's which is to be divided amongst the plaintiff and defendant in the equal share. Plaintiff who is an opportunist despite having the knowledge of the execution and registration of the will by Sh Ram Roop as well as his half entitlement in the Bank deposits as per registered will dated 08.09.2010 further by taking advantage of his name as joint account holder surreptitiously by executing false and fabricated documents and has also made false reports qua the loss of the original fixed deposit Receipts (FDRS's) before the bank authorities and making false declarations and had executed false indemnity bonds to exclusively receive the entire investment amount of FDR's knowingly that the original FDR's was lying with the Roop Ram which were given to the counter claimant by Sh. Ram Roop during his lifetime for its appropriate distribution after his death in accordance with the terms of registered will. The plaintiff had exclusively withdrawn/transferred the entire amount of the fixed deposit receipts in his accounts/name on the following dates:- (I)

FDR of PUNJAB NATIONAL BANK A/c no. 16792 Date of Transfer 9-9-2013 amount of Rs. 8,20,724/-, (ii) FDR of State Bank Of India A/c No. 30820797532 date of Transfer 17-9-2013 amount of Rs. 1412410/- (iii). FDR of K.C.C Bank Amb A/C No. 222239 date of transfer 26-4-2014 amount of rupees 656920/-

28. The counter claimant in accordance with the terms of the registered will dated 08.09.2010 is entitled to receive/get the half of the amount including the bank interest of the aforesaid amount in the following manner:-

I. FDR of PUNJAB NATIONAL BANK A/c no. 16792 total amount as on 9-9-2013 the date of transfer Rs. 8,20,724/- (Eight lakhs Twenty Thousand Seven Hundred Twenty Four) and half amount of the total sum comes out to Rs. 410362/- (four lakh ten thousand three hundred sixty-two) the interest calculated at the rate of 9% per annum over the half amount up till 1-8-2015 from the date of transfer i.e. 9-9-2013 Rs. 67,710/- (Sixty-seven thousand seven hundred Ten) and the total sum inclusive of interest payable to counter claimant is Rs. 4,78072/- (four lakhs seventy-eight thousand and seventy-two).

ii. FDR of State Bank Of India A/c No. 30820797532 as on 17-9-2013 the date of transfer amount of Rs. 1412410/- (Rs. fourteen lakhs twelve thousand four hundred and Ten) and the half amount of the total sum comes out to Rs. 7,12,205/- (seven lakh twelve thousand two hundred five) the interest calculated at the rate of 9% per annum over the half amount up till 1-8-2015 from the date of transfer i.e. 17-9-2013 is rupees, 1,17,513/- (one lakh seventeen thousand five hundred thirteen) and the total sum inclusive of interest

payable to the counter claimant is Rs. 8,29,718/- (eight lakhs twenty-nine thousand seven hundred eighteen).

iii. FDR of K.C.C Bank Amb amount as on A/c No. 222239 total 26-4-2014 date of transfer Rs. 656920/- (six lakhs fifty-six thousand nine Hundred and the half amount of the total sum comes out to rupees 3,28,460/- (three lakh twenty-eight thousand four hundred sixty) the interest calculated at the rate of 9% per annum over the half amount up till 1-8-2015 from the date of transfer i.e. 26-4-2014 is Rs. 36,051/- (Rupees thirty-six thousand fifty-one) and the total sum inclusive of interest payable to the counter claimant is Rs. 3,64,511/- (three lakhs sixty-four thousand five hundred eleven).

29. Totaling the aforesaid claimed amounts Rs.4,78072+ Rs. 8,29,718+ Rs.3,64,511 Rs.16,72,301/- (rupees Sixteen lakh seventy-two thousand three hundred one) is payable to the counter claimant by the plaintiff/respondent. The plaintiff per recitations of the registered will dated 8-9-2010 is liable to make payment of Rs. 16,72,301/- to the counter claimant which is the half amount of the fixed deposit receipts (FDR's) inclusive of interest.

30. The plaintiff in order to evade from his obligation/liability to make the payment of the half of the FDR amounts to the counter claimant had file the present false frivolous suit to suppress his own wrong illegal acts and perfidy committed by him. The plaintiff has not made the payment of the aforesaid amount to the counter claimant and had been exclusively usurping the benefits of the amount along with the bank rate interest at the rate of 9% per annum more than his entitlement from the dates of the transfer. With these averments, the counter claim is filed..

31. The non counter claimant/plaintiff resisted and contested the counter claim of defendant by filing written

statement of counter claim. The plaintiff admitted that Khasra Nos. 3033, 3034 and 3035 was coming in ownership of one Sh. Gurbax Singh, but the possession over the suit land in counter claim of Gurbax Singh is not admitted. It is admitted that said Gurbax Singh S/o Nandu had sold aforementioned parcel of land vide registered sale deed dated 21-3-1973 in favour of Daulat Ram S/o Thunia Ram R/o Village Mughal Tehsil Amb Distt Una H.P for valuable consideration of Rs. 3000/- and the mutation No. 2728 the basis of the aforesaid sale deed entered and sanctioned in the revenue record and the aforesaid Daulat Ram had entered into registered deed of exchange with Late Sh Ram Roop and the area of 7 Kanal 17 marlas comprised of khasra No.s 3033, 3034, 3035 situated at village Amb Khas was exchanged on the basis of registered exchange deed dated 04.04.1973 with the land comprised of 9 kanals 18 marlas situated at Village Mughal Tehsil Amb District Una H.P. The mutation No. 2735 on the basis of aforesaid registered deed of exchange was also entered and sanctioned. However it is specifically stated here that the plaintiff always remained in possession of the suit land in counter claim. Sh Daulat Ram never came in possession of the suit land in counter claim even an execution of the sale deed by Sh. Gurbax Singh son of Sh. Nandu.

32. It is admitted by the plaintiff that Sh. Ram Roop deceased became owner after exchange deed but the plaintiff remained in possession and remained cultivating the land in the same manner as prior to the sale deed and prior to exchange deed, actually deceased Ram Roop exchanged land with Daulat Ram with the view that plaintiff is in possession of land in question as the same was suitable to the plaintiff. Hence the counter claimant has no locus standi to object the same after the death of Sh. Ram Roop. The counter claimant is estopped by his act and conduct as being elder brother, he also remain seeing the settled possession of plaintiff earlier under Gurbax Singh and thereafter under Sh. Ram



Roop, as Sh Ram Roop only came in the shoes of Sh. Gurbax Singh. It is wrong to state that Sh. Ram Roop after the death of his wife was being looked after by the defendant and his wife Smt. Madhu and two sons and was also staying in the residential house of the defendant, where the defendant and his family members were meeting the personal requirement of Sh. Ram Roop and also seeing to his comfortable lodging and boarding and meeting out all the needs and requirements with respect to the necessities of Sh. Ram Roop out of natural love and affection. Denied that in lieu of the service rendered by the defendant and his family members in his sound disposing mind and out of his free will had executed and got registered a Will in favour of the defendant on 08.09.2010 in the presence of the marginal witness at Village Amb before Sub-Registrar Amb. It is wrong to state that Sh. Ram Roop had bequeathed the assets comprising of moveable and immovable property in favour of the defendant except those which have been given to the plaintiff/respondent recited in the registered Will dated 08.09.2010. It is wrong to state that it was recited in the registered Will that all the assets forming the part of estate of Sh Ram Roop except those which have been bequeathed to the plaintiff/respondent shall be succeeded by the counter claimant/defendant after the death of Sh. Ram Roop. Actual matter of fact is that Sh Ram Roop and his wife always resided with the family of plaintiff and after the death of mother of parties even then Sh. Ram Roop remain residing with plaintiff's family and remain carrying on business jointly with plaintiff. The plaintiff always resided with deceased and remain helping hand to deceased in all his activities, the alleged Will dated 08.09.2010 alleged to be executed by Sh. Ram Roop qua his moveable and immoveable property is a forged and fabricated document and has been procured by using undue influence by counter claimant being prominent Advocate in District Una upon the Sub-Registrar at Amb as well as upon the witnesses of the alleged deed, moreover the

witnesses also very close to him. The alleged Will has been procured against the wishes of deceased who was since the year 2009 was not capable to execute any such document being not in proper sense on before that particular date and after said occurrence when deceased got fatal head injury even was not remain capable to understand any thing and even was not in a position to recognized any person even to the near relation.

33. It is wrong that after the death of Sh. Ram Roop and on the basis of alleged Will dated 08.09.2010 the counter claimant/defendant has become owner in possession of the suit land alongwith other land mentioned in the Will. It is wrong to state that respondent/plaintiff is clever and shrewd strong headed person and an opportunist furtively by his stratagem had succeeded in bringing his name in the revenue record in connivance with revenue authorities without any right, title, at the back of the predecessor-in-interest of parties in the subsequent Jamabandi for the year 1976-1977 in respect of Khasra Nos. 3033, 3034 and 3035 of area 7 Kanals 11 Marlas. it is submitted that whatever as per actual and factual position of the spot has been got inserted by defendant who is elder brother and is an Advocate by profession. The plaintiff remain in possession of this land but the plaintiff is not in knowledge of any change whatsoever came in revenue record at the instance of defendant and late Sh. Ram Roop and only defendant can explain such change which he get inserted in the revenue record.

34. It is wrong that plaintiff/respondent in the month of May 2014 started asserting his exclusive right over the suit land and denied the right and title of the counter claimant over the suit land of any kind. If such claim had been raised by Sh. Ram Roop then matter would have been otherwise and if the father being an old person himself had inducted his son as tenant-at-Will for proper management. It is wrong to state that the plaintiff has further

threatened the counter claimant that he will alienate and encumber the suit land and further will exploit the natural resources of the suit land by cutting and removing the valuable trees. It is wrong to state that plaintiff had without any right, title or interest had surreptitiously, illegally, unauthorizedly get inserted his name in the revenue record qua ownership and possession of the suit land in his favour in the Jamabandi for the year 1976-1977. It is wrong to state that the entries depicting the status of the plaintiff as owner in possession are patently wrong, illegal and void-ab-initio. It is wrong to state that plaintiff has no right, title or interest whatsoever in the suit land in any capacity and there is no order of any competent authority or procedure was ever adopted while incorporating the name of the plaintiff in the revenue record. It is submitted that no order of any competent authority is required to induct the tenant by the lawful owner nor any procedure from any revenue authority is required. It is only the bilateral contact between owner and tenant by incorporating rent in the revenue record, whether consenting owner is receiving the same or not. It is wrong to state that a fictitious entry depicting the status of plaintiff/respondent as Gair Marusi over Khasra No. 3035 in the revenue record is formal. It is wrong to state that the entry in revenue record of Jamabandi for the year 1971-72 qua Khasra No. 3035 was coming in record with the consent of counter claimant who is himself very prominent Advocate of the Distt. Una and is known as well wise of revenue record.

35. It is wrong to state that the ownership and exclusive possession over the area of 7 Kanals 11 Marlas wrongly shown in illegal manner. The settlement record is the mirror of land and the entries has to be made as per actual and factual position of the spot and the settlement authorities prepared the record as per spot inspection in presence of counter claimant. It is wrong to state that all the subsequent revenue entries in the name of plaintiff in the

revenue record are wrong, illegal, baseless and void and are ineffective and inconsequential against the right of counter claimant. The plaintiff is owner in possession of the suit land involved in the counter claim. It is submitted that the elder son of counter claimant is also an advocate and further he has also been appointed as an legal advisor to State of H.P. to defend the case in the court of Tehsildar Amb and by taking the benefit of such appointment the counter claimant moved an application for the correction of the entries by way of Fard Badar before Tehsildar Amb, actual when such application was not maintainable as by way of notification of Ld. Financial Commissioner (Appeals) H.P. has restrained any such correction by way of Fard Badar. The counter claimant by using influence of Tehsildar and over the revenue field staff got false and frivolous report qua possession in favour of counter claimant and without summoning the plaintiff tried to get that correction by way of Fard Badar. The son of the plaintiff is an advocate came to know about such application moved by counter claimant, the plaintiff moved an application before Collector Una to transfer the case to any other Tehsildar but the counter claimant and his son who are very influential persons when came to know about such application procured the order from Tehsildar Amb with direction to field staff from the back date of nullify the effect of transfer application. on transfer application the District Collector Una summoned the counter claimant and by hearing both parties set aside the order passed by Tehsildar Amb which was procured in the back date and transfer the case to Tehsildar Una. It is wrong to state that the Collector Una transferred the already adjudicated case but actual matter of fact of this that when counter claimant came to know about transfer application, he obtained the order of back date by using influence as well as by taking the influence of his advocate son, so it is wrong to state that the order passed by Distt. Collector Una is void and the non'est in the eyes of law..

36. It is wrong to state that Sh. Ram Roop was exclusively and solely running the business as cloth merchant as well as the stockiest of Tobacco products. In reply it is submitted that since the childhood of plaintiff he remained working with Sh. Ram Roop and whatsoever from time to time business is taken that was jointly run by Sh. Ram Roop in all business, no doubt being father and respective business remain going in the name of Sh. Ram Roop but the counter claimant has nothing to do with any type of business carried jointly by Sh. Ram Roop and plaintiff because the counter claimant after study remain in his own profession as an advocate. It is wrong to state that Sh. Ram Roop had been receiving income as rent from his properties as well as Khasra Nos. 1853, 1854 situated in Village Amb Khas. All the rents and other profits were always shared in equal share by father and the plaintiff. It is wrong to state that upon the demise of Sh. Ram Roop the plaintiff was having active knowledge of the execution of the registered Will dated 08.09.2010 and on 06.01.2014 had submitted the copy of the registered Will of Sh. Ram Roop before the Superintendent of post office Una for the exclusive change of land lordship/ownership in his name in accordance with the registered Will. In reply to such allegation it is hereby submitted that the plaintiff has no knowledge of any such alleged Will, the original if any forged and fabricated Will remained in possession of counter claimant and he by his own may have submitted the alleged Will to the postal authority to render false and frivolous Will as genuine one. Sh. Ram Roop during his lifetime had invested joint income in the fixed deposit receipts (FDR's) but the same were always remain joint of plaintiff and Sh. Ram Roop and even all the A/c were of nature either or survivor, so the plaintiff has better lien on all such accounts. It is wrong to state that the plaintiff is an opportunist and having the knowledge of the execution and registration of the alleged Will of Sh. Ram Roop. Sh. Ram Roop neither willing to execute any Will nor he has executed any such Will, even deceased was not in a position to execute any

such deed, the Will has been procured by counter claimant in an illegal manner with active connivance of Sub Registrar as well as witnesses, even Sh Ram Roop on the alleged date of execution of Will was never in sound disposing mind due to prolonged serious illness after grievous head injury. The counter claimant has no entitlement of share in any of the Bank deposit on the basis of alleged Will, the plaintiff has rightly obtained the duplicate fixed deposit receipt and payments thereafter.

37. It is pertinent to mention here that earlier the plaintiff and Sh. Ram Roop were carrying on joint business in shops and all the important documents like that of Bank Pass Book, FDR's receipt etc. were lying in those shops, when Sh Ram Roop got severe head injury and thereafter could not remain to understand any thing, the counter claimant took the possession of documents whatsoever. Even there was big chest Box in which Sh Ram Roop used to keep precious jewelry like that of gold, silver also usurped all the valuable jewelry exclusively. It is wrong to state that the plaintiff has executed false and fabricated documents. It is wrong to state that the plaintiff knowingly that the original FDR's was lying with Sh Ram Roop. It is wrong to state that the deceased Sh Ram Roop was given the FDR's to counter claimant for its appropriate distribution after his death, in accordance with the terms of registered Will. It is wrong to state that greed, malice and dishonest intention of the plaintiff can be observed from his action involving the immoral and undue haste and extraordinary agility shown by plaintiff. The counter claimant has no right as per alleged Will to receive  $\frac{1}{2}$  amounts from the deposits of any kind. It is wrong to state that in order to evade from obligation/liability to make payment of the half of the FDR amounts to the counter claimant, the counter claimant has filed this false and frivolous counter claim by suppression of his own wrong. Thereafter, after denying all the submissions of counter

claimant, the non counter claimant/plaintiff prayed for dismissal of counter claim.

38. Thereafter, replication to the written statement of counter claim was filed, in which the defendant/counter claimant denied all the defence taken by the plaintiff and reasserted his whole claim.

39. The following issues were framed on dt. 26.02.2019, 09.05.2022 and 03.12.2022:-

1. Whether the plaintiff is entitled for decree of declaration to the effect that parties are joint owner in possession of the suit land? OPP
2. If issue No.8 is proved in affirmative, whether the plaintiff is entitled for decree of declaration to the effect that the impugned will dated 08.09.2010 is an outcome of fraud, misrepresentation and undue influence, as alleged? OPP
3. Whether mutation No.901, 1299 and 1015 attested on the basis of alleged Will dated 08.09.2010 are liable to be declared null and void, having no effect on the rights, title and interest of the plaintiff, as alleged?OPP
- 3-A Whether the plaintiff is entitled for a decree for permanent prohibitory injunction, as alleged? OPP
4. Whether the plaintiff has suppressed true and material facts from this court, as alleged? OPD
5. Whether the plaintiff has no locus standi to file the present suit, as alleged?OPD
6. Whether the suit is liable to be dismissed on the ground of maintainability, as alleged? OPD
7. Whether the plaintiff is estopped by his act and conduct to file the present suit, as alleged?OPD

8. Whether the impugned Will dated 08.09.2010 is duly executed in due process of law, as alleged? OPD Counter Claim-
9. If findings under issue No.8 are in affirmative, whether the defendant/counter claimant is entitled for a decree of declaration on the basis of Will dated 08.09.2010, as alleged and is also entitled for a decree for a sum of Rs.16,72,301/- as alleged? OPD/CC
10. Whether the counter claimant/defendant is entitled for money decree of Rs.16,72,301/- on the basis of Will dated 8.9.2010, as alleged? OPD/CC
11. Whether the counter claim is liable to be dismissed on the ground of maintainability ?OPD
12. Whether the counter claimant has no cause of action, as alleged? OPP/Non-CC.
13. Whether the counter claim is time bared, as alleged? OPP/Non-CC.
14. Whether the counter claimant has suppressed material facts from this court, as alleged? OPP/Non-CC.
15. Whether the counter claim is not properly valued, as alleged? OPP/Non-CC.
16. Whether the counter claimant has no locus standi, as alleged? OPP/Non-CC.
17. Whether this court has no jurisdiction as alleged? OPP/Non-CC.
18. Relief.

40. I have heard the Ld. counsels for the parties and also perused written arguments/submissions of parties and gone through the record carefully..



41. For the reasons to be recorded here in after, while discussing the aforesaid issues, my findings on the aforesaid issues are as under:

|              |   |                                                                                                             |
|--------------|---|-------------------------------------------------------------------------------------------------------------|
| Issue No.1   | : | No                                                                                                          |
| Issue No.2   | : | No                                                                                                          |
| Issue No.3   | : | No                                                                                                          |
| Issue No.3 A | : | No                                                                                                          |
| Issue No.4   | : | Yes                                                                                                         |
| Issue No.5   | : | Yes                                                                                                         |
| Issue No.6   | : | Yes                                                                                                         |
| Issue No.7   | : | Yes                                                                                                         |
| Issue No.8   | : | Yes                                                                                                         |
| Issue No.9   | : | Yes                                                                                                         |
| Issue No.10  | : | Yes                                                                                                         |
| Issue No.11  | : | No                                                                                                          |
| Issue No.12  | : | No                                                                                                          |
| Issue No.13  | : | No                                                                                                          |
| Issue No.14  | : | No                                                                                                          |
| Issue No.15  | : | No                                                                                                          |
| Issue No.16  | : | No                                                                                                          |
| Issue No.17  | : | No                                                                                                          |
| Relief       | : | The suit is <b><u>dismissed</u></b> whereas counter claim is allowed as per operative part of the judgment. |

**REASONS FOR FINDINGS****Issues No.1 to 3, 3-A, 4, 5, 7 to 10:**

42. All these issues are taken up together being interlinked and interconnected to each other. In order to adjudicate the issues between the parties, it is appropriate to discuss and appreciate the evidence led by the parties. The plaintiff/non-counter claimant examined as many as 14 witnesses in support of his suit and in defence of counter claim. PW-1 Balbir Singh Assistant Office Superintendent, BSNL office, Amb proved application form of telephone connection bearing No.01976-260273 Ex. PW-1/A in the name of testator Ram Roop and nominee is Rahul Sood S/o Rakesh Babu plaintiff as per his record. In cross-examination he admitted that date of issue and residential records is not shown in the records.

43. PW-2 Raman Kumar Secretary Nagar Panchayat, Amb proved family register of testator Ram Roop which shows plaintiff and his family as members in this family register Ex. PW-2/B as per records. Further, stated that defendant and his family members having separate family register as per records. PW-3 Umesh Kumar Branch Manager PNB, Amb proved copy of joint saving bank account of testator and plaintiff PW-3/A having mode of operation either or survivor from the records. In cross-examination, he admitted that first name holder is main account holder of the account and no record was called from him to show plaintiff had deposited any amount in this account. Further deposed that FDR Ex. DA amounting to Rs.8,20,724/- in this bank account was closed on 09.09.2013 as per Ex. DB and amount was transferred to saving account of the plaintiff vide bank statement Ex. DC as per records and there is nothing on record to show any permission letter issued by the testator to the bank for transferring of this amount to plaintiff after his death.

44. PW-4 Ajit Singh Senior Assistant, State Bank of India Branch Amb proved copy of joint saving bank account of testator and plaintiff PW-4/A having mode of operation either or survivor from the records. In cross-examination, he admitted cheque and FDR amounting Rs.11 lakh in this bank account has been issued in the name of first account holder testator Ram Roop as per Ex. DD and Ex. DF and interest in this FDR was issued in the name of testator. He admitted that no record is called from him to show plaintiff had deposited any amount in this bank account. He further deposed that amount of FDR after closing FDR was transferred in saving account on dated 17.09.2013.

45. PW-5 - LR. No.2 of the plaintiff i.e., Rahul Sood s/o Plaintiff Rakesh Babu filed his affidavit PW-5/A in his examination-in-chief in which he supported the pleadings of his plaint. In cross-examination, he showed ignorance to the fact that his father was Post office agent since the year 1976. He further showed ignorance about the Post Office agency of her mother Kamlesh Kumari Ex. DJ although he admitted photo of her mother upon it. He admitted that Khasra No.1853 and 1854 is laid in front of Khasra No.574. He stated that building upon Khasra No.1853 and 1854 was given on rent by testator to HIM URAJA. He showed ignorance that as per Judgment and appeal, the old Khasra No.1865 of Khasra No.1853 and 1854 had been come into entitlement of Ram Roop. He admitted that he has not mentioned the Khasra Nos.1853, 574 and 1854 in plaint as they are not mentioned in the Will. He further admitted photographs of the shops of testator and office of defendant No.1 shown in photograph Ex. DL. He also admitted photographs of shops existing upon Khasra No.1853 and 1854 as shown in photograph Ex. DM. He admitted that shop in front of shops shown in Ex. DM after crossing the highway were given on rent to the Post-Office by lease deed by the testator. He admitted that Ex. DR registered lease deed was executed between testator

and Postmaster, Amb of building upon Khasra No.574 as shown in photograph Ex. DN. He further stated that after the death of testator, a fresh lease deed was executed between his father plaintiff Rakesh Babu and Postmaster, Amb in the year 2014. He admitted that his father plaintiff has not challenged sale deed No.2159 dated 28.09.2012 executed in favour of Simrit Sood by the testator. He also admitted that testator used to receive the rent of Post Office building during his lifetime. He also admitted that lease deed Ex. DS was executed between plaintiff and postal Department. He admitted that he has not placed on record any follow up medical record of testator after 28.10.2009. He admitted that sale deed Ex. DW has been executed by his father as power of Attorney in which witnesses are Ram Lal Chowkidar and Raj Kumar whereas identifier is Mahinder Pal Namberdar. He further admitted that testator individually used to receive the interest certificates of FDR and used to file individual income tax return. He admitted that Gurbax Singh had filed a injunction suit of Khasra No.3035 against the plaintiff which was decreed in favour of Gurbax Singh who also filed execution against against the plaintiff in which plaintiff paid Rs.47.05. He further denied defence of the defendant during cross examination..

46. PW-5 Kamla Devi stated that she rented out her one shop to deed writer Naresh Kumar in which Naresh Kumar, defendant and Ved master were sitting. PW-6 Neeraj Kumar Registration Clerk office of Sub-Registrar Tehsil office, Amb deposed that he issued information under RTI Act PW-6/A as per records. In cross-examination, he admitted entries and registration of documents could be done in computer of ground floor as well as in computer of first floor and these documents has become authenticated. PW-7 Rakesh Kumar litigant Branch DC Office, Una proved notification of appointed private Advocates for Government purposes Ex. PW-7/A. PW-8 Bhupinder Singh Superintendent Post Office, Una stated no business hours are determined for agents in

postal circle Una. PW-9 Parmod Singh and PW-10 Babita Sharma stated about non-availability of required records in their office.

47. PW-11 – Atyut Kumar Banta stated that testator was his maternal uncle as he was the husband of Sakuntla Devi who was sister of his mother Krishna Devi. His in laws are in Hoshiarpur and his sister is married at village Paragpur and he used to meet them and his maternal uncle at Amb. He came to Amb to give invitation of his daughter's marriage in August, 2008 to testator, plaintiff and defendant. Testator alongwith Kamlesh Kumari visited at the marriage of daughter of his sister at Paragpur in April, 2009 and at that time, testator was not able to recognize anybody properly. He came to know that testator had fallen and was sick and therefore, he met to testator in the house of plaintiff in 2010 when he was going to Paragpur and at that time the mental condition of testator was that he could not recognize him by face or voice and it could be due to illness or old age. Ram Roop was accompanied by Kamlesh Kumari during any event of joy or sorrow as he resided with the plaintiff. In the mean time, income from the shop went down in 2009 and shop was closed and plaintiff opened his office separately. In cross-examination, he stated that neither he is permanent resident of village Amb nor having any voter card of Amb. He admitted that his daughter in law and her parents used to take legal consultant from the defendant and the defendant had advised daughter-in-law which led to filing of case against him and his son. He stated that he had not seen any medical record of Ram Roop nor asked to the plaintiff about the medical treatment of testator. He admitted that he had not come on the death of testator and plaintiff nor he was called. Further stated that Plaintiff, defendant and testator had not went to his daughter's marriage. He stated that another son of Ram Roop i.e., Kuldeep had been died and he denied the suggestion that Ram Roop had only two sons. He also admitted his presence in the house of the plaintiff as wife of Rahul Sood

asked him to take bath in the morning. He denied the suggestion that the shop shown in Ex. DL and DM are belonging to the testator. He could not recognize the building shown in photographs Ex. DL and DM belonging to whom. He admitted the suggestion that testator never said him that defendant had shown any undue influence upon him. He admitted the source of income of plaintiff and his wife Kamlesh Devi from the Post office agent work. He do not know name of Nagar of Amb in which Testator was residing. He admitted that neither the family of plaintiff nor the family of defendant informed him about the death of testator. Although, he denied the suggestion that he deposed falsely as the defendant had advised his daughter-in-law against him.

48. PW-12 Chanderbhan is formal witness. PW-13 Kuldeep Chand record keeper GRR DC office Una proved SPA Ex.PW-13/A, copy of plaint Ex.PW-13/B, copy of replication Ex.PW-13/C from the records of case file CS No.121/85 Rakesh Babu vs Karan Dev.

49. PW-14 Dr B.S. Chopra. M.D. and Director of Patel Hospital stated as per discharge summary Ex.PW-14/A of patient Ram Roop aged 88 yrs, the patient was admitted in hospital on 1/8/2009 and was discharged on 28/8/2009. He was suffering from Parkinsons disease, Dementia and brain hemorrhage. Basically he was suffering from high blood pressure. Due to illness and age, the patient became irrelevant and incoherent and Semiconscious and confined to bed. He was suitably prescribed and discharged on 28/8/2009. report of CT head is attached with discharge slip. In cross examination, PW-14 admitted that CT scan shows hemorrhage was resolved, self stated that hemorrhage was not in the brain but in the vessels of the brain. He admitted the suggestion that patient was not referred to psychiatrist or neurologist. He further stated that he can not tell mental condition of patient for years 2009-10 and the discharge summary is incomplete. He admitted that there is no advice or

reference to food pipe, urine pipe or assistance of care giver or attendant except medicine. He admitted that none of the consultants declared the patient mentally unstable and no mention of psychiatric illness, depression or cognitive enhancement is given. He stated that dr. Parmod Singla has prepared the discharge summary and his observation is only for the period treatment.

50. In documentary evidence, the plaintiff led on record PX-1 to PX-5 Receipts, Ex. PW1/A Application form for telephone connection, Ex. P14 to P16 Copy of Jamabandi year 2009-10, Ex. P18 Application for incorporation dt. 1.8.14, Ex. P-19 Copy of Tehsildar Order, Ex. PW1/A SBI Saving Bank Passbook, Ex. PW3/A PNB Saving Bank Passbook, Ex. P-4 Application for transfer dt. 22.1.15, Ex. P-20 Copy of Order dt. 18.04.15, Ex. P-1 to P-11 Copy of Jamabandi year 2009-10 and 2005-06, Ex. P-12 Assessment Register, Ex. P13 Nakal Shajra, Ex. PW2/B Family Register, Ex. PX1 Photocopy of death certificate, Ex. PX3 Telephone Bill dt. 24.03.15, Ex. PX2 Photo copy of register deed, Ex. Writer Naresh Kumar, Ex. P-28 Certified copy of order dt. 22.09.18, Ex. P-29 Party Details, Ex. PX-4 & 5 Copy of Civil Suit No. 112-I-2008, Ex. PX-6 Copy of Challan, Ex. PX-6 Copy of POA, Ex. PX-7 Copy of plaint, Ex. PX-8&10 Copy of Statement, Ex. PX-9 Copy of Application, Ex. PX-11&12 Copy of statement, Ex. PX-13 Copy of amended decree, Ex. PX 14 Copy of Written Statement, PX-15 Copy of statement of PW-1, Ex. PX-16 Copy of summons of Clerk, Ex. P17 Copy of order dt. 28.11.2013, Ex. P-Z4 Certified copy of POA, Ex. P-Z5 Amended Head Note, Ex. P-Z6 Application for anticipatory bail, Ex. P-Z6 Copy of plaint No. 60-I-2015, Ex. PZ-7, Ex. Amended compromise deed, Ex. PZ-9 Copy of plaint, Ex. PZ-10 Photocopy of List of witnesses, Ex. PX Certified sale deed dt. 18.07.72, Ex. PZ Certified sale deed dt. 11.10.72, Ex. PW-13/A Photocopy of Special Power of attorney, Ex. PW-13/B Copy of plaint, Ex. PW-13/C Copy of replication, Ex. PX letter dt. 7.1.2014, Ex. PW6/A Letter dt. 06.11.23 No. 607/RC, Ex.

P21 to 23 Jamabandi year 2019-20, Ex. PW7/A Copy of Notification dt. 24.07.13, Ex. PW-10A Letter dt. 30.07.2024, Ex. P-28 Copy of application for partition, Ex. PZ-7 Jamabandi year 2019-20, Ex. PW14/A Discharge Summary, Ex. Mark-I Cash Book. Mark-A to Mark-Z and Mark Z-1 to Mark Z-245 executed/registered various.

51. In order to rebut the evidence of plaintiff/non counter claimant, the defendant/counter claimant examined 11 witnesses in defence of suit and in support of counter claim. DW-1 Baldev Singh Sub-Registrar/retired Tehsildar stated that testator had produced the will Ex.DW-1/A for registration of the same before him on the same day of execution i.e., 08.09.2010 alongwith Naresh Kumar Deed Writer, witness Ram Lal Chokidar, witness Mahinder Singh and identifier Mohinder Pal Namberdar. He read over and explained the contents of Will to Testator and Testator after admitting the same as correct put his signature and aforesaid persons also put their signatures. Thereafter he registered the Will. He proved certificate of registration Ex.DW-1/B and C. Further stated that testator was in sound and disposing mind when he was produced before him in presence of the witnesses and identifier. DW-1 in cross examination stated that he is not aware about working hours of Chowkidar. He denied the suggestion of Urine pipe fixed to the testator. He denied the suggestion that testator could not walk without assistance of others. He also denied active participation of the defendant and not signing and registration of the Will by the testator in his presence. He admitted that defendant as an Advocate used to appear before him in the Court work.

52. DW-2 Reena Kumari Record Keeper, Sadar Record Room, Una proved Ex. DW-2/A Jamabandi for the year 1971-72 from the records showing Gurbax Singh is an owner in possession of the land comprised in Khasra No.3033 and 3034 and showing plaintiff Rakesh Babu in cultivation column of land comprised in Khasra



No.3035 as Gair Marusi without entry of rent. She further proved copy of mutation entry No.2728 Ex. DW-2/B from the records showing transfer of land comprised in aforesaid Khasra numbers measuring 7 Kanal- 17 Marlas by sale deed by the Gurbax Singh in favour of Daulat Ram. She also proved copy of mutation entry No.2735 Ex. DW-2/C from the records showing aforesaid Khasra numbers land measuring 7Kanal-17 Marlas was exchanged in favour of the Ram Roop S/o Sh. Ram Nath. Aforesaid Mutations are reflected in Jamabandi for the year 1976-77 Ex. DW-2/D. She further stated that record does not show any mutation or registered transaction which conferred any ownership rights to Rakesh Babu plaintiff upon aforesaid Khasra numbers.

53. Rajesh Kumar Advocate proved certified copy of lease deed dated 22.09.2014 Ex. DW-3/A executed by the plaintiff Rakesh Babu in favour of the Postal Department with regard Post-Office building, Amb which bears his signatures as a witness and same was got registered.

54. DW-4 Ram Lal witness of Will filed his affidavit Ex.PW-4/A in his examination in chief in which he stated about the preparation/writing of Will Ex.DW-1/A by Naresh Kumar Deed Writer at the directions of testator and proved due execution of Will by stating that at the time of the execution of Will the testator was in sound disposing mind. Naresh Kumar Deed Writer had read over the contents of Will to testator and the testator after understanding the same as correct put his signature in Urdu in his presence and in presence of Naresh Kumar Deed Writer as well in presence of witness Mahinder Singh and identifier Mohinder Pal Namberdar. He and other witness Mahinder Singh also put their signature upon the Will in presence of the testator and then testator produced the will for registration of the same before the Sub-Registrar, Amb DW-1 on the same day i.e., 08.09.2010 alongwith aforesaid persons. Sub-Registrar, Amb DW-1 read over and explained the contents of

Will to Testator and Testator after admitting the same as correct put his signature. This witness also proved signature of testators and other witness Mahinder Singh upon the Will. He further deposed that the Sub-Registrar thereafter registered the Will. DW-4 Ram Lal Chowkidar in cross examination admitted his signatures as a witness, signature of Mohinder and Signature of deed writer Naresh Kumar in various kind of deeds executed/registered Mark-A to Mark-Z and Mark Z-1 to Mark Z-245. He denied residing of testator with Rakesh Babu plaintiff but stated that he resided with defendant. He denied the suggestion that testator was not in sound mind after the year 2009. He further denied case of the plaintiff in cross-examination.

55. DW-5 Sarang Pani Inspector Post office Amb stated he have brought the file Records of Post office building Amb on rent-lease. The original lease deed dated 12.12.2005 is present in the records which is written in the name of Superintendent of post office. The lease deed is for the building of post office Amb, whose certified copy is Ex.DR . An RTI (Right to Information) application of defendant Rajan Sood s/o Ram Roop VPO Amb was received as per the records and regarding which the postal Department sent the reply of same on 24.07.2015 according to the record and copy of which is Ex.DW-5/A which is correct according to the original. The RTI application is also present in the record. The copy of the RTI application is Ex.DW-5/B. In the record of the above, an original letter of land lord Ram Roop Sood dated 9.9.2011 bearing the seal of the department has been received. Similarly, he have brought the original of the application Ex.DW-5/C given by Rakesh Babu. This letter Ex.DW-5/C was submitted by Rakesh Babu to change the name of the landlord of building to his name and to collect rent since September 2011 upto date. Along with it, a copy of the death certificate and a copy of the family register and Jamabandi for the year 2009-10 was attached. Vide letter Ex. Ex.DW-5/A, the postal

department sought legal proof of building from the plaintiff and in response of this letter, the plaintiff submitted copy of Will dt. 08.09.2010 duly attested by Notary by hand to postal dept on dt.06.01.2014. The postal department recommended to execute the lease of the Post office building Amb and rent in the name of Rakesh Babu plaintiff by considering Rakesh babu as the owner as per the Will. After that, the Superintendent of Postal Office, Una passed an office order to release the rent from September 2011 to 22.08.2013 in the name of Rakesh Babu. The copy of which is EX.DW-5/E. The original copy of the noting sheet of the department is Ex.DW-5/F. After this, on 15.01.2014, he gave a letter requesting to pay next rent and lease deed in his name. The noting of the department is recorded on the same letter which is Ex.DW-5/G. After executing of lease deed Ex.DW-3/A on 22.09.2014 between postal dept and plaintiff, the rent from Sept 2011 till 21.08.2003 was released in favor of plaintiff Rakesh Babu. He have brought the original receipt of payment of lump sum rent period of sept 2011 to 21.08.2013 to plaintiff, whose copy is Ex.DW-5/H which has the signature of plaintiff as cash recipient. Similarly, the copy of the receipt of rent of Rs. 20332/- from dated 22.08.2013 to August 2014 by the plaintiff is Ex.DW-5/J and next rent receipts are Ex.DW-5/K to S which has the signature of plaintiff as cash recipient. He in cross examination admitted that in the letter given for name change, no reference of will has been made and no copy of the will has been attached with it. Self stated that the department of post office had written a letter to Inspector post on 4.10.2013 in which legal documents are demanded from Rakesh Babu to prove his claim for building and in response to this Rakesh Babu has submitted a Will verified from Notary on 06.01.2014 by hand. He denied the connivance with defendant..

56. DW-6 Gurmail Singh Clerk GRR DC Office, Una proved certified copy of plaint Ex. DW-6/A, copy of judgment Ex. DW-6/B, copy of judgment DW-6/C and extract in Urdu DW-6/D from the records of C.S. No.233/1971 titled as Kaka Mal Vs. Gram Sabha. DW-7 Babita Sharma Senior Tax Assistant, Income Tax Office, Una deposed from the records that individual account holder bearing PAN No. ADOPS2332N filed income tax return on 14.09.2010 for the financial year 2009-10 vide computer generated return acknowledgment dated 14.09.2010 Ex. DW-7/B. She further proved return acknowledgment DW-7/A, DW-7/C, DW-7/D and DW-7/E.

57. DW-8 Narender Singh clerk of KCC Bank proved FDR Ex.DW-8/A issued in the name of Testator first account holder from the records. He further deposed that as per records plaintiff submitted application Ex.DW-8/D alongwith death certificate of testator Ex.DW-8/E for issuance of duplicate FDR on dt 26.04.2014. The bank obtained indemnity bond from plaintiff and amount of FDR rs. 837983 was transferred to the account of plaintiff as per statement Ex.DW-8/G. As per records, the testator had not given gift or permission/instruction to transfer the amount to plaintiff after his death. Although, in cross examination, he admitted that after death of one account holder, the amount is paid to other account holder.

58. DW-9 Pankaj Kumar Jaswal S/o Naresh Kumar deed writer stated that his father has been expired in the month July, 2014 and he identified signature and handwriting of his father upon Will Ex. DW-1/A as he has seen his father signing and writing. DW-10 Khem Raj neighbourer shop keeper of testator filed his affidavit Ex. DW-10/A in examination-in-chief in which he supported defence of the defendant. In cross-examination he stated testator being old age person used to walk with assistance of stick (*sothi*) and testator told him about Will in 2011. He further stated that defendant's land is being used by him for repairing of his house and he cooperates

for the same. He denied the suggestion that testator was not in sound mind. DW-11 defendant Rajan Babu filed his affidavit Ex. DW-11/A in his examination-in-chief in which he supported his pleadings of written statement of suit as well as pleadings of his counter claim. In cross-examination, he denied relevant suggestions of Ld. Counsel of the plaintiff and he denied the case of the plaintiff and also denied defence raised in the counter claim by the plaintiff.

59. In documentary evidence, the defendant led on record Ex. D-1 Copy of Sale deed No.806 dt. 16.7.1996, Ex. D-2 Copy of Sale deed No.190 dt. 14.2.1996, Ex. D-3 Copy of Sale deed No.191 dt. 14.2.1996, Ex. D-4 Copy of Sale deed No.1152 dt. 12.9.1995, Ex. D-5 Copy of Sale deed No.860 dt. 29.6.1995, Ex. D-6 Copy of Sale deed No.812 dt. 16.7.1996, Ex. D-7 Copy of Sale deed No.28 dt. 5.01.1995, Ex. D-8 Copy of Sale deed No.864 dt. 26.07.1996, Ex. D-9 Copy of Sale deed No.340 dt. 15.3.1999, Ex. D-10 Copy of Sale deed No.1474 dt. 18.11.1999, Ex. D-11 Copy of Sale deed No.181 dt. 6.5.2009, Ex. D-13 Copy of plaint, Ex. D-14 Copy of Judgment dt. 6.6.1972, Ex. D-15 Copy of decree sheet dt. 06.06.1972, Ex. D-16 Copy of Zimni Order, Ex. D-17 Copy of execution petition, Ex. D-18 Copy of notice 21 Rule 32 dt. 28.10.1772, Ex. D-19 Copy of list property, Ex. D-20 Copy of warrant execution, Ex. D-21 Copy of Registered exchange deed No.24/4.4.1973, Ex. D-22 Copy of decree sheet, Ex. D-23 Account Statement, Ex. D-23 Decree in appeal, Ex. D-24 Copy Jamabandi year 1913-14, Ex. D-25 Copy Jamabandi year 1956-57, Ex. D-27 Copy Jamabandi year 1965-66, Ex. D-28 Copy Jamabandi year 2001-02, D-29 to 31 Copy Jamabandi year 2014-15, D-32 Copy Aks Musabi, Ex. D-33 Copy Jamabandi year 2014-15, Ex. D-34 to 36 Copy Jamabandi year 2013-14, Ex. D-37 Copy Aks Musabi, Ex. DW-22 Copy Jamabandi year 2009-10, Ex. DW1/A Will No. 348/2010 dt. 08.09.10, Ex. DW1/D Party Details, Ex. DW-1/D Copy Jamabandi year 1976-77, Ex. DW-2/A Copy of Misal Hakiat 1971-72, Ex. DW-2/B Copy of mutation 1976-77, Ex. DW-2/C Copy

of mutation 1976-77, Ex.DW-5/A letter dt. 24.7.2015, Ex.DW-5/B Copy of RTI of Rajan Babu, Ex. DW-5/C Copy of RTI of Rakesh Babu, Ex. DW-5/D Copy of letter dt. 4.10.2013, Ex.DW-5/E Copy of letter dt. 7.1.2014, Ex. DW-5/F Copy of noting sheet, Ex. DW-5/G Copy of letter of lease deed& noting dt. 15.1.2014, Ex. DW-5/H Copy of rent receipt, Ex. DW-5/J to 5/S Copy of rent receipts, Ex. DW/T Copy of Letter 29.09.2023, Ex. DW-5/Q letter dt. 17.10.2023, Ex. DW-6/A Copy of plaint, Ex. DW-6/B Copy of judgment dt. 8.9.1982, Ex.DW-6/C Copy of judgment dt. 13.10.1986, Ex. DW-6/D Copy of Jamabandi year 1956-57, Ex. DW-8/A&PX1 Original FDR dt. 23.03.2007, Ex. DW-8/B Copy of long term receipt, Ex. DW-8/C Letter to Manager dt. 26.4.2014, Ex. DW-8/D Application for conversion for joint FDR, Ex. DW-8/E Copy of Death certificate, Ex. DW-DF Original FDR 05.04.2007, Ex.DW-DF Original FDR 08.11.10, Ex.DW-8/H Certificate by KCC, Bank dt. 27.4.2010, Ex. DW-8/F Indemnity Bond, Ex.DW-8/G Transaction Enquiry , Ex. DY Copy of sale deed No.1181/21.3.1973, Ex. DW-7/A & DW-7/C,D Income Tax Acknowledgment, Ex.DW-7/B & 7/D Copy of Receipts of return year 2010-11, Ex. DW-9/B Copy of deed writer register, Ex. DW-12 & P29 Copy of sale deed No. 2159 dt. 28.9.2012, Ex.DW-12/A Copy of sale deed dt. 28.9.2012, Ex.DB & DC Account Ledger Inquiry, Ex.DG& DH Certificate dt. 5.5.2010, Ex. DR Copy of Rent deed No.1 dt.2.1.06, Ex. DS Copy of Agreement, Ex. D-38 Copy of Mutation No. 901, Ex. DW3/A Copy of lease Deed No. 2333, Ex. DW3/B Signature, Ex. DW3/E Site plan, Ex. DW3/D Parties Details, Ex. D38 Order dt. 30.01.2021, Ex. D39 Order dt. 10.01.2020, Ex. D40 Certified copy of Civil Tr. App., Ex. DD Input Reference, Ex. DE Account Statement, Ex. DN to DQ Photographs, Ex. DW Sale Deed No. 957, Ex. DW4/N &O Signature, Ex. DT Original Aadhar Card, Ex. DJ Photo, Ex. D40 Jamabandi year 2000-01, Ex. DW7/A Certified copy of plaint, Ex. DK Identity Card, Ex. DW6/A Certified copy of plaint, Ex. DW6/B Certified copy of challan, Ex. D 41&42 Copy of Order dt. 15.03.24, Ex. DW-7/A copy of plaint.

60. After appreciating the facts and circumstances of the case in the light of evidence on record and oral as well as written arguments led by Id. Counsel for the parties, in addition to my aforesaid observations, my further observations and findings are as under.

61. Perusal of Will dated 08.09.2010 Ex. DW-1/A shows that two buildings adjoining to the national highway i.e., three storey building in which Post-Office is running in the ground floor and other two storey building after crossing the national highway has been bequeathed in favour of the plaintiff by the testator. This will further shows that the amounting in the savings accounts and FDRs of State Bank of India, Punjab National Bank, Punjab and Sind Bank and Kangra Cooperative Bank has been bequeathed in equal shares in favour of plaintiff and defendant by the testator. This Will further shows that the remaining entire property has been bequeathed by the testator in favour of the defendant. This Will further shows that this Will is written/scribe by deed writer Naresh Kumar, and Mahinder Singh and Ram Lal were witnesses of this Will. Testator was identified by Namberdar Mahinder pal. It is also undisputed that identifier Mohinder Pal Lambardar, scribe of Will Naresh Kumar and witness of will Mahinder Singh has been expired and as such could not be examined.

62. The Ld. counsel of defendant placed significant emphasis on the importance of judgment passed by Hon'ble Punjab and Haryana High Court **Sundhri (Dead) Through Lrs. vs Lala Ram (Dead) Through Lrs. (2005)** 140 PLR 493 and contended registration of will sufficiently proves that Will is free from all suspicious circumstances and Testator was in disposing and sound mind at the time of execution of Will and it was voluntarily executed by him. But this contention is not sustainable in the settled

preposition of law. Hon'ble High Court of Gauhati in **Bimalendu Das vs. Smt. Manjushree** 1994-1 c.c.c. 102 held that Registration of will is not itself sufficient to dispel all suspicion. Signature of testator may be genuine but mind may be not free. A circumstance would be suspicion when it is not expected from normal person in normal circumstances.

63. In **Daulat ram vs. Sodha 2005-1 S.C.C.** 40 Hon'ble Apex Court held that onus to prove fraud, undue influence, coercion etc. is on who alleges same and if there is suspicion circumstances then onus to prove/remove such suspicion circumstances on propounder. Onus to prove valid will in the eyes of law is also on propounder. Hon'ble Punjab-Haryana High Court **Sundhri (Dead) Through Lrs. vs Lala Ram (Dead) Through Lrs.** (2005) 140 PLR 493 held as under-

*"it is clear that there is a presumption of sanity of the testator. Once a Will is proved, there is no further onus on the propounders to prove that the testator was in a sound disposing mind at the time of execution of the Will. However, when a Will is challenged on the ground of the testator's mental incapacity, the onus lies on the person so alleging. He is required to prove the same by leading evidence to that effect."*

Therefore, it is settled law that onus to prove valid will in the eyes of law is on propounder i.e. defendant in the present case and onus to prove fraud, undue influence, insanity etc. is on who alleges same i.e. plaintiff in the present case and if there is suspicion circumstances then onus to remove such suspicion circumstances is on propounder.

64. DW-4 Ram Lal witness of Will deposed in details about the preparation/writing of Will by Naresh Kumar Deed Writer at the directions of testator and proved due execution of Will by stating



that at the time of the execution of Will, the testator was in sound disposing mind. Further deposed that Naresh Kumar Deed Writer had read over the contents of Will to testator and the testator after understanding the same as correct put his signature in Urdu in his presence and in presence of Naresh Kumar Deed Writer as well in presence of witness Mahinder Singh and identifier Mohinder Pal Namberdar. He further deposed that he and other witness Mahinder Singh also put their signature upon the Will in presence of the testator and then testator produced the will for registration of the same before the Sub-Registrar Amb DW-1 on the same day i.e., 08.09.2010 alongwith aforesaid persons. Sub-Registrar Amb DW-1 read over and explained the contents of Will to Testator and Testator after admitting the same as correct put his signature. This witness also proved signature of testator and other witness Mahinder Singh upon the Will. He further deposed that the Sub-Registrar thereafter registered the Will.

65. DW-1 Baldev Singh Sub-Registrar/Tehsildar stated due registration of the Will by the testator in presence of the aforesaid witnesses and identifier and further stated that testator was in sound and disposing mind when he was produced before him in presence of the witnesses and identifier. The presumption of truth is attached to the certificate of registration. Although it is contended by the learned counsel for the plaintiff that the photographs at the time of the attestation of the Will were clicked in other computer room and the registration formalities was done at other room. Mere this fact is not suspicious circumstances in view of the fact that PW-6 registration clerk stated that entries and registration of documents could be done in computer of ground floor as well as in computer of first floor and these documents has become authenticated. Further, the deposition of DW-1 and PW-6 shows that in fact as per usual practice and the convenience of the office of Sub-Registrar, the photographs and other formalities for the due

registration of the documents could be done either of the computer room whether it is situated at ground floor or situated at the first floor..

66. A presumption can be raised that the execution was proper in terms of [Section 114](#) of the Evidence Act in case of registration of Will. The plaintiff had an opportunity to rebut this presumption but he has not been able to do so. Hon'ble Supreme Court in [Prem Singh & others Vs. Birbal & Others](#) (2006) 5 SCC 353 can be looked into where it is observed in the following words:

*"There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption in the instant case, Respondent 1 has not been able to rebut the said presumption."*

It has been held in **Ramji Dass Vs. Gurdwara Singh Sabha & Anr.** 2001 (1) C.C.C. 175 (P & H), that a registered Will stands on a better footing than an unregistered Will in as much as about a registered Will, it is taken that it was the act of testator of sound disposing mind. It has further been held in **Bachan Singh & Anr. Vs. Bakshish Singh** 2001 (1) C.C.C. 484 ( P & H ), that a registered Will may stand on a better footing vis-a-vis unregistered Will because when a Will is produced before Sub Registrar, it is read out to the testator by him and he registers the Will after he makes that execution of Will is of sound disposing mind. Further *held that* registration of will impliedly shows that will was result of sound deposing mind of the testator. Hon'ble Punjab-Haryana High Court **Raj Kumar And Another vs Kailon Devi 2009-4 C.C.C. 361** p and h held that in a case where the Will is a registered document then

the endorsement made by the Sub Registrar that the Will had been thumb marked or signed by the executant in his presence after it was read over to the executant has a presumption of truth.

Therefore, mere registration of Will in the present case although is not conclusive proof of validity of Will, but further corroborates the facts that Testator was in good sense and sound disposing mind and also was in good physical condition.

67. DW-1 Baldev Chand Registrar/Tehsildar and DW-4 Ram Lal Chowkidar witnesses of Will are only two alive persons examined before the Court to prove behaviour, physical and mental conduct and condition of the testator on the day of the execution and registration of the Will. Both stated that testator was in sound and disposing mind on the day of preparation, execution and registration of Will. The plaintiff has challenged the Will on the ground of mental incapacity of testator to execute the Will. But the deposition of DW-1 in examination-in-chief is not challenged on this ground by the plaintiff in cross examination and even no suggestion is put to him by plaintiff regarding suffering of testator with mental incapacity. Hon'ble Himachal Pradesh High Court in **Sh. Pratap Singh & Ors vs Gurdev Singh & Ors** decided on 18 August, 2023 in RSA No.521 of 2007 held as under-

*“ 62. Learned First Appellate Court also held that it was not proved that the testator was in his sound disposing state of mind. This finding cannot be sustained. Plaintiff Surjeet Singh did not say in his testimony that Rangila was not in his sound disposing state of mind at the time of the execution of the Will. It was not suggested to Baldev Singh . (DW-1) in his cross-examination that Rangila was not in his sound disposing state of mind at the time of the execution of Will. Similarly, it was also not suggested to Kesar Singh*

*that Rangila was not in his sound disposing state of mind at the time of execution of the Will. Therefore, the findings recorded by the learned First Appellate Court that Rangila was not proved to be in his sound disposing state of mind, are contradictory to the record. It was laid down in Ashok Bauri vs State, 2021 SCC OnLine Del 1248= 2021 (279) DLT 561 that there is a presumption in favour of sanity and the burden lies on the person, who challenges it to prove that the person was insane."*

68. The witnesses of the Will were known of the parties. Therefore, there is no evidence on record to show any enmity between the witnesses and plaintiff or that they with connivance of defendant executed a false and forged Will. Moreover, no material and cogent evidence has been adduced by the plaintiff to show that at the time of the execution of the Will, the mind condition of Testator was affected in any manner. The plaintiff also did not adduce any evidence to show that witnesses of the Will were influenced by any other earnest consideration.

69. Ld. Counsel for the plaintiff argued that there are some contradictions in the statement of DW-1 and DW-4 which creates suspicious circumstances around the Will. I am of the opinion that this argument is not tenable in the eyes of law because both these witnesses DW-1 and DW-4 corroborated their version that the Will was read over and explained to Ram Roop Tetator in presence of witnesses and thereafter understanding it as correct Tetator and witnesses put their signatures over the Will. It is undisputed that out of two witnesses of the Will, only Ram Lal DW-4 is alive and

the other witness has been died. DW-1 Baldev Chand retired Tehsildar/Registrar is also examined to prove due execution of Will. They deposed almost after 13 years from the preparation attestation, execution and registration of Will on dated 08.09.2010 and therefore cannot be expected to speak minutely about the events happened on day of 08.09.2010. The arguments raised by the Ld. counsel for the plaintiff regarding some contradiction are not material to the facts in issue and these minor and immaterial contradictions are bound to occurs whereas DWs were examined after thirteen years of the date on which Will was executed. Minor contradictions naturally happens due to lapse of time. such minor contradictions are bound to arrive as evidence in the present case is recorded much after the event and witnesses are bound to forget the complete details and insignificant facts. Further gap of such long period, the witnesses cannot be expected to recall and reproduce their statement with mathematical accuracy and minor contradictions do not merit rejection of Will. The minor contradictions as argued by Ld. Counsel for the plaintiff do not go to the route of matter especially when they are proved to have no enmity of any kind with the plaintiff. The arguments of the Ld.counsel for the plaintiff cannot affect the execution of the Will in any manner. Hon'ble Punjab and Haryana High Court in **AIR Vice Marshal Mahinder Singh Rao vs Narender Singh Rao & Other** 2010-3 RCR Civil 508 held that minor contradictions, in the statements of the witnesses examined after lapse of so many years, could not be a ground to hold, that the Will was surrounded by suspicious circumstances

70. Plaintiff contended that witnesses, identifier and scribe of Will were well known to the defendant and are also litigant client of the defendant who is an advocate in Amb and they are also professional witnesses and defendant in connivance of these persons prepared forged and false Will. The Ld. Counsel for the plaintiff further contended that witness Ram Lal Chowkidar is professional witness because he has attested several documents and he has also remained litigant client of defendant and therefore not only he was under undue influence of the defendant but also he was connived with the defendant and helped to get executed the Will in favour of defendant..

71. The witness Ram Lal DW-4 also deposed that plaintiff Rakesh Babu also used services of the deed writer Naresh Kumar for writing of his documents and he was the attesting witness of Ex. DW sale deed dated 28.05.2009 got executed by plaintiff Rakesh Babu. PW-5 LRs of plaintiff had also admitted execution of sale deed by his father as GPA and also admitted Ram Lal as attesting witnesses of this sale deed Ex. DW. Furthermore, plaintiff Rakesh Babu had also got executed sale deed Ex. D-9 dated 15.03.1999 in which the attesting witness was Namberdar Mahinder Pal and it was scribed/written by deed writer Naresh Kumar. Similarly, Ex. D-10 sale deed dated 18.11.1999 also shows that this document was got executed by plaintiff Rakesh Babu which is scribed/written by Naresh Kumar Deed Writer and Namberdar Mahinder Pal was the attesting witness. Ex. D-11 GPA in favour of plaintiff Rakesh Babu also shows Ram Lal Chowkidar as attesting witness of same which is scribed/written by Naresh Kumar Deed Writer. The perusal of sale deed Ex.

D-1 to Ex. D-8 shows that these were got executed by testator during his lifetime at different points of time which are scribed by Naresh Kumar Deed Writer.

72. Aforesaid facts shows that testator and the plaintiff generally used to take services of Naresh Kumar Deed Writer for the preparation, writing and executing of their documents. Therefore, the plaintiff also generally received the services of witness Ram Lal, identifier Namberdar Mahinder Pal and Naresh Kumar Deed Writer for the preparation, execution and the registration of the documents. Afore-stated evidence shows that these persons are not only known to the defendant but also well known of the plaintiff and testator. In fact they were well known to the family of the parties and the plaintiff, defendant and testator used their services time to time due to their acquaintance with them as well as readily availability of these persons for the purposes of execution and registration of the documents. Furthermore, to my mind there is usual practice in almost every registration/Tehsil Offices to get execute the deeds with the assistance of the known concerned Namberdar, Chowkidar. known deed writer etc., due to their readily availability and acquaintance with the atmosphere. In the present case also not only the parties and testator but many other people of the locality has received their services as witnesses/identifier and deed writer and therefore, mere this fact that testator also got their services like other people of locality including plaintiff is not suspicious circumstances but a usual practice.

73. Moreover, there is no evidence on record to show that these witnesses/identifier, scribe, sub registrar

in connived with the defendant prepared false and forged Will and neither depositions of these witnesses indicates so. Therefore, mere the fact that defendant is an Advocate and Ram Lal Chowkidar is his client cannot affect the validity of the Will in view of the aforesaid facts and circumstances of the case where everyone in small locality of Amb is known to each other due to their profession, services etc. and used to take services of each other accordingly. Furthermore, it is not law of the land that there shall always be adverse presumption/inference against the advocate and there shall always be favourable presumption/inference in favour of the normal person. The allegation, that the Will was executed at the instance of defendant is not proved, as he had not participated in drafting, execution and registration of the Will, and merely because defendant being an advocate has acquaintance with these persons due to his profession, can not be a ground to hold, that the Will was surrounded by suspicious circumstances. Even PW-11 admitted the suggestion that testator never said him that defendant had shown any undue influence upon him.

74. Hon'ble Punjab and Haryana High Court in **Air Vice Marshal Mahinder Singh Rao vs Narender Singh Rao & Other** 2010-3 RCR civil 508 held that the allegation, that the Will was executed at the instance of defendant/respondent No. 1 was not proved, as admittedly he had not participated in drafting of the Will. Hon'ble Punjab and Haryana High Court in **Kashmir Singh vs Sucha Singh & Others** 1993 Civil Court Cases 366 held that :-

*"The Court has also found the will to be suspicious on account of minor contradictions in*



*the oral testimony and the fact that the attesting witnesses Gurbachan Singh is a relation of the testator. The fact that a minor discrepancy existed in the statements is a circumstance which supports the claim of the appellant that the witnesses have not be tutored. Further, the fact that one of the witness is the wife's sister's husband is no ground to cast any suspicious regarding the genuineness of the document. One may normally like to have the relation as one of the witnesses so that no family dispute arises at a later stage."*

75. In case titled **Vinod Kumar vs Hari Singh RSA Nos. 127 and 128 of 2023** decided on 12.10.2023, it is contended that Krishan Chand witness of Will who was a bar clerk is professional and stock witness which is a suspicious circumstance as this witness deposed that he remained a bar clerk for two years and he had put signatures on 20-30 Wills and used to charge ₹50-100 for attesting the Will. The Hon'ble High court of H.P. by rejecting the contention held as under-

*"It was submitted that Krishan Chand was a professional witness and he used to charge money for attesting the documents and this is another suspicious circumstance. This submission is not acceptable. Merely because Krishan Chand had charged money for putting his signatures does not mean that his testimony is to be discarded as a whole. He was a bar clerk. Jati Ram went to his Advocate to get the Will attested. Jati Ram had only one witness with him. So in these circumstances, the association of bar clerk by*

*the Advocate cannot be said to be a suspicious circumstance..”*

76. The witness PW-11 Atyut Kumar Banta deposed that the testator was not able to recognise anybody properly in the April 2009 when he met with him. It is undisputed that injury to the testator was sustained in August, 2009 and there is no pleadings of the plaintiff to show that prior to injury to the testator in August, 2009, he was not able to recognize anybody as stated by PW-11 Atyut Kumar Banta. Therefore, this statement is contrary to the pleadings of the plaintiff. The plaintiff pleaded that the testator was bed ridden and unable to perform call of nature but this witness in his deposition neither stated that testator was unable to perform his calls of nature and was bed ridden. Therefore, deposition of PW-5 plaintiff that the testator was bed ridden, unable to perform call of nature and had mental incapacity after sustaining of injury in 2009 in absence of any other reliable and cogent and material evidence is not enough to prove his pleadings. There is nothing on record show that any medical treatment is given during the afore-stated alleged infirm and mental conditions to the testator and not any doctor or other attendant is examined by the plaintiff to prove the aforesaid mental and physical conditions of the testator to prove that on the day of execution and registration of Will, the Testator was bed ridden and had mental incapacity.

77. PW-11 failed to recognize the shops and abadis of Testator/parties shown in photographs Ex. DL and DM whereas PW-5 Plaintiff Rahul Sood duly admitted photographs of the shops of testator and office of defendant No.1 shown in photograph Ex. DL and also admitted photographs of shops existing upon Khasra No.1853 and 1854 as shown in photograph Ex. DM. He stated about third son of Ram Roop i.e., Kuldeep and stated he had been died and he denied the suggestion that Ram Roop has only two sons.

But neither records of case nor Ex.P-13 Pedigree Table shows about third son i.e. Kuldeep.

78. In view of aforesaid observations, it appears that this witness neither has personal knowledge of state of affairs of family of Testator nor has personal knowledge of state of affairs of property of Testator. Therefore, the aforesaid deposition of PW-11 creates doubt on his intention and on the case of the plaintiff. Moreover, the defendant was granting legal assistance to his daughter-in-law and their parents in the case against him and his son, which shows that this witness has not good relations with the defendant and in these circumstances, his contrary deposition against defendant due to bad relation and interested in success of plaintiff in view of the aforesaid facts cannot be ruled out.

79. The copy of judgment Ex. DW-6/B and copy of judgment in appeal Ex. DW-6/C of C.S. No. 233/1971 shows that that the old Khasra No. 1865 of khasra Nos.853, 854 and 574 was declared in the ownership in possession of testator Ram Roop with others but not plaintiff. Even from the perusal of the copy of plaint Ex. DW-7/A filed by plaintiff in C.S. No.868/2014, it appears that the plaintiff stated that abadis in the aforesaid Khasra numbers are ancestral abadis. This shows that although the Abadi situated upon these Khasra numbers are bequeathed in favour of the plaintiff but same was owned and in possessed by testator.

80. Ld. counsel of plaintiff contended that Testator Sh. Ram Roop was not in good senses and in sound disposing mind at the time of execution of the said Will due to suffering of Parkinson disease and sustained head injuries in august 2009 and after injury

in august 2009, the testator was remained bed ridden and was unable to take the call of nature and had mental incapacity and therefore, the Will is forged and fabricated document. In view of depositions of DW-1, DW-4 discussed above, lack of evidence on record showing mental and physical incapacity on the date of execution and registration of Will, and other evidence discussed below, to my mind, this contention is not tenable..

81. Undisputedly, from the perusal of discharge summary Ex. PW-14/A, the Testator was suffering from Parkinson disease. But no any medical or other direct evidence is placed on record by the plaintiff to the effect that the cognitive faculty of the testator had been impaired adversely due to Parkinson disease on the day of execution and registration of Will whereas testator was remained alive for almost three years after execution and registration of Will. Neither discharge summary Ex. PW-14/A nor deposition of PW-14 Dr. shows physical and mental condition of the Testator at the time of the discharge from the hospital on dt. 28.08.2009 and it has been stated that Testator was suitably discharged.

82. The discharge summary is related to the period of 01.08.2009 to 28.08.2009 and no medical follow up of Testator thereafter is produced or shown to the doctor despite the direction of follow up after 7 days mention in the discharge summary. There is no records in the case file nor any deposition of doctor showing that the testator was mentally incapable in the year 2010 when he got executed the Will and only discharge summary is not be able to prove the mental incapacity of the testator in the year 2010 whereas there is gap of one year from the date of discharge from the hospital till the date of execution of the will on 08.09.2010. In absence of updated medical records, it cannot be presumed conclusively that the illness Parkinson of the testator by the

passage of time directly impaired and deteriorated his mental conditions at the time of the execution of the Will and there is no medical evidence which could show that testator was not capable of taking his own decision freely at the time of the execution of the Will. Dr. only stated about facts that incoherent and irrelevant when the testator was admitted in the hospital but could not explain that the nature of illness conditions of the testator was temporary or permanent or deteriorated/impaired more after discharge from the hospital. He further admitted that no followup of medical record of testator is shown to him. In every illness including Parkinson and Dementia, it is required to be proved that the mental condition of the testator was impaired and deteriorated at the time when he executed the Will and in the present case there is no medical or direct evidence with regard to the testator's mental condition was impaired and deteriorated in September, 2010. Even PW-14 was not able to state about the progress of the illness Parkinson after discharge as he had not seen the medical followup of the testator nor able to state about exact progress of aforesaid illness affecting mental condition or unsound mind. There is no other medical record or direct evidence in case file to show that the testator has mental incapacity and was not his good sense in the year 2010 and thereafter till his death.

83. Plaintiff has failed to place on record follow up of medical treatment of testator after discharging him from the hospital on dt. 28.08.2009 vide discharge report PW-14/A and also has not placed on record other medical prescription slip or other medical treatment record of period w.e.f dt. 29.08.2009 to the year 2013 of his death. Plaintiff's contention of living testator solely with him is found negative in view of not having aforesaid records because if testator was living/residing with him then plaintiff should had aforesaid record or any of the aforesaid documents in normal course of life, human conduct and natural events. Even no any

relative or neighbourer is examined by the plaintiff to prove residing of Testator solely with him. The testimony of PW-11 Atyut Banta is doubtful in view of my aforesaid observation with regard him and not able to corroborate the testimony of PW-5 Rahul Sood. Section 114 of Indian Evidence Act provides that "the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case." The Illustration (g) of this section enables the court to presume the existence of any fact which the court thinks likely to have happened, regard being had to that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it. It is case of plaintiff himself that Testator was solely residing with him and therefore, plaintiff should had medical records of testator but same is not placed on record. Therefore, it leads to an adverse inference against the plaintiff that medical treatment evidence which could be in possession of plaintiff and is not produced by him before the court would, if produced, be unfavourable to the plaintiff who withholds it and therefore, case of plaintiff that Testator was not able to understand due to parkinson decease is not believable. No any cogent, reliable and material evidence is adduced by the plaintiff to rebut aforesaid facts and presumptions.

84. It is further contended that testator was about 89 years old and therefore her mental condition was affected and due to old age, he was not in sound disposing mind and was unable to understand the nature of the act. This contention is not sustainable in view of fact and circumstance of case read with evidence discussed supra. Hon'ble Himachal Pradesh High Court in **Sh. Pratap Singh & Ors vs Gurdev Singh & Ors**

decided on 18 August, 2023 in RSA No.521 of 2007 held as under-

*"64. It was submitted that he mentioned his age as 83 years in the Will and a presumption can be drawn that he was unable to understand the nature of the act. It was laid down by this Court in Shanti Devi Vs Dali Devi & Anr 2002(2) SLJ 1095 that the old age of the executant does not show that she was not in a sound disposing state of mind. It was observed:-*

*"16. The second contention of Mr. Bhardwaj. learned counsel for the appellant, that Munshi Ram was 90 years of age and therefore, was not in disposing mind at the time of execution of the Will is concerned, it has no substance. There is nothing on record to show that the testator was not in sound disposing mind at the time of execution of the Will. It is true that the validity of a will depends on the testator being of sound disposing mind at the time of the making of the Will but at the same time, a sound disposing mind does not depend upon the advanced age. The mere fact that Munshi Ram was 90 years of age at the time of execution of the will, would not lead to the conclusion that he was not in sound disposing mind. [In Tirath Singh & Ors v. Sajjan Singh \(Died\)](#) through his LRs & Ors. 1998(1) S.L.J. 232 it was held that mere advanced age Will does not lead to any presumption that the testator was not of sound disposing mind. The very fact that the Will in question was got registered by the testator on the same date shows that the testator was of sound disposing mind at the relevant time. [See Gurpal Singh v. Darshan Singh](#) 1998 (1) S.L.J. 174. Mr Bhardwaj. learned counsel for the appellant was unable to point out any evidence on record except that*

*of a self-serving statement of the plaintiff, that the testator was not of sound disposing mind. There is no merit in the contention that the appellant was mentally incapacitated to execute a valid Will..”*

85. Hon’ble Punjab and Haryana High Court in **Air Vice Marshal Mahinder Singh Rao vs Narender Singh Rao & Other** 2010-3 RCR civil 508 held that:-

*“Advocate can be an attesting witness, which is not in itself ground to create doubt or suspicion qua the proper execution. The Division Bench of this Court, in the case also held, that merely because testator is suffering from illness or in a state of agony cannot be stretched to hold, that he had no disposing mind at the time of execution of the Will..”*

86. The Id. Counsel of plaintiff contended that Parivar Register of testator and plaintiff was one and they were residing together and defendant has separate Parivar Register and the house taxes receipts shows that house tax was paid separately. But to my mind mere this fact is not suspicious circumstances in view of the aforesaid observations and where there is nothing on record to show that testator had no love and affection towards the defendant or he was otherwise undue influenced by the act and conduct of the defendant. Even DW-10 Khem Raj the neighbour of the parties as well as DW-4 Ram Lal Chowkidar who knew the parties personally stated that the testator was residing with the defendant and the contents of Will also shows residing of testator with defendant.

87. The contrary contention of learned counsel of the parties are that the testator was living with them and was dependent upon them. But from the perusal of evidence on record and documents it appears that plaintiff, defendant and testator had



independent source of income and they were not dependent to each other. Undisputedly, testator was doing business of cloth house and Biri, cigarette. Deposition of DW-7 Babita Sharma senior tax assistant read with income tax return acknowledgment Ex.DW-7/D issued in the name of testator for the financial year 2009-10 filed on 14.09.2010 shows performing his job diligently and active participation in his business activities. Income Tax Returns of the testator proved by DW-7 Babita Sharma shows that these returns filed in individual capacity and Ex. DW-7/D return acknowledgment is pertaining to the financial year 2009-10 which not only shows the active participation of testator in the business activities generating his income but also shows that there was no joint business income with the plaintiff. No any other evidence is adduced by the plaintiff to show that he and testator were jointly doing the business of cigarette and cloth. On the other hand, from the evidence on record, it is duly proved that the plaintiff and his wife were generating income from the business of Post-Office and Bank agents.

88. It is also pertinent to mention here that it is undisputed that the Will was registered on the same day of its execution which also shows that the testator was in sound disposing mind with the knowledge of consequences of his Will. PW-5 plaintiff Rahul Sood has admitted in his cross-examination that testator during his lifetime used to receive the rent of the building rented to the Post-office by him which further shows that at the time of execution of the Will, the testator was sound mind and was managing his personal as well as property state of affairs after discharge from the hospital.

89. The deposition of PW-5 plaintiff Rahul Sood read with certified copy of sale deed Ex.D-12 shows that testator ram Roop had also executed a sale deed in favour of one Samriti Sood on dated 28.09.2012 almost after two years of execution of the Will but

same was never challenged by the parties including plaintiff on the basis of mental incapacity or infirmity of the testator whereas the case of the plaintiff is that he had no knowledge of the Will on that time and so, he was considering himself co-owner/ legal heir of this sold property also.

90. Ld. counsel of plaintiff further contended that not equally division of properties by the Testator in Will in faovur of parties goes to shows that suspicious circumstances of mental incapacity and connivance of witnesses/scriber with defendant. This contention is not sustainable in the eyes of law. In **Ramesh Kumar Vs. Kaushalya Devi** 2002 Vol. CCC 598 Hon'ble court held that-

*"We have duly considered the submissions made at the bar. The first aspect which is to be appreciated while considering the grant of probate of a Will is the fact that the absence of a Will the estate would go by succession and it will not be proper to doubt the authenticity of the Will merely because it bequeaths the estate contrary to the normal line of succession or inheritance. In fact that is the very purpose of the Will since if the testator wants normal line of succession for inheritance to taken place there would hardly be an occasion for a Will other hand be specifying the mode of division. It is not doubt true that execution of the Will has to be proved duly in accordance with law and if there are suspicious circumstances surrounding the due execution of Will then the same have to be dispelled by the person propounding the Will. The registration of the*

*Will lends a greater authenticity to the proper execution of the Will. The document has to be read as a whole and once the burden is discharged by the propounder of the Will and the Will is held to be properly executed and witnessed, the onus shifts to the person seeking to challenge the Will to establish the reasons why probate of the said Will should not be granted.."*

91. In view of aforesaid judgment, the mere not equally division of properties by the Testator in Will can not be termed as suspicious circumstances of mental incapacity and connivance of witnesses/scriber with defendant as this is very purpose of execution of will. Moreover, perusal of Will dated 08.09.2010 Ex. DW-1/A further shows that testator had already purchased some land in Amb and Gagret in the name of plaintiff and as such, had duly compensated him.

92. Ld. counsel of plaintiff placed much reliance on the judgment of **Murthy vs, C. Sardambal AIR 2022 (2) CCC 209,** and further contended that signature of testator on Will are forged one. If, really plaintiff disputed the signature of Testator on Will, then what prevent him to send the Will to experts opinion for comparison of signature nor such application for comparison of signature has been moved by the plaintiff. The facts and circumstances surrounding this judgment is significantly and substantially different from the peculiar facts and circumstances of the present case. Ld. counsel of plaintiff also placed much reliance on the judgments of **Gumat vs Rukmani devi** 1995 (1) RRR 347, **Jaswant Kaur vs Amrit Kaur** 1977 AIR (SC) 74, **Rani purnima Devi vs. Kumar Khagendra Narayan Dev** 1962 AIR (SC) 567, **Kishan singh**

**vs Sheela Saxena** 2001 AIR (MP) 250, **Mohan Singh vs Ishar Singh** 2005 AIR (Punjab) 79, **Anumati Vs PNB** 2005 AIR (SC) 29, **Kavita Kanwar vs Pamela Mehta** 2020 AIR (SC) 2614, however, to my mind, the specific facts and circumstances surrounding these judgments are significantly and substantially different from the peculiar facts and circumstances of the present case.

93. Ld. Counsel for the defendant by relying upon the documents Ex. DW-5/A to Ex. DW-5/S proved by DW-5 Sarang Pani and lease deed Ex. DW-3/A proved by DW-3 contended that plaintiff has already taken the benefits of bequeathed movable and immovable property to him in Will by redeeming/withdrawing FDRs and by got executing the lease deed of building rented to post-office in his favour and also received the rent from postal department of this building and therefore, not only plaintiff is estopped to file the present suit by his act and conduct but also has lost cause of action and locus-standi against the defendant. On the other hand, Ld. Counsel for the plaintiff contended that documents Ex. DW-5/A to Ex. DW-5/S and lease deed Ex.DW-3/A are neither relevant nor admissible in evidence and not able to prove the contented facts of getting the benefits by the plaintiff.

94. Nature and contents of these documents Ex.DW-5/A to Ex. DW-5/S and lease deed Ex.DW-3/A alongwith other numerous documents of similar nature in evidence placed on record in case file shows that these documents come under the category of [Section 74](#) of The Indian Evidence Act and as such are public documents. Section 35 of Indian Evidence Act make public documents as relevant to the facts in issues or relevant fact. Section 114 of Indian Evidence Act provides presumption of the facts that the judicial and official acts have been regularly performed and that the common course of business has been followed in particular cases. The court is bound to presume the

genuineness of a public document from the duly certified secondary copy. Courts generally lean in favor of accepting or admitting the contents of public documents since these documents have as their genesis some reliable source and can be traced back to that reliable source for verification if necessary.

95. Hon'ble Apex Court in **Shri Partap Singh (Dead) through LRS. & ORS. Versus Shiv Ram (Dead) Through LRS.** in Civil Appeal No. 1511 OF 2020 decided on 20.02.2020 held that record-of-rights prepared in official capacity carries the presumption of correctness in terms of Section 35 of the Indian Evidence Act, 1872. Hon'ble Bombay High Court in **Smt. Vasudha Gorakhnath Mandvilkar vs The City And Industrial Development** 2008 (4) AIR BOM R 695 (DB) held that the proof of the contents of public documents can be by production of their certified copies under [Section 77](#) in [Chapter VI of the Evidence Act](#). Since the certified copies carry a presumption as to their genuineness under [Section 79](#) of the Evidence Act, they need not be proved in evidence..

96. When a document is produced from proper custody, and it is in a condition that creates no suspicion, the law presumes that it is genuine. This presumption serves as a practical tool for the courts in accepting documents that have been maintained in an appropriate manner. The presumption under the law would hold good until it is rebutted. In **Ram Chandra Agarwal v. Anandilal Podar** (AIR 1954 SC 44) the Supreme Court emphasized that Section 79 creates a strong presumption of genuineness when a document is produced from proper custody and is in a condition that arouses no suspicion. The court elucidated that this presumption is not lightly to be displaced and requires clear and cogent evidence to the contrary. A certified copy of a public document is accurate and

genuine unless proven otherwise. This provision simplifies the evidentiary process, particularly in cases involving official records and public documents. In **Koteswara Rao v. S. Venkateswara Rao (AIR 1983 SC 984)**, the Supreme Court affirmed the presumption under Section 80 regarding certified copies of public documents. It held that such copies are presumed to be genuine, and the onus to prove otherwise lies on the party challenging their authenticity. This decision reinforced the importance of relying on certified copies in legal proceedings.

97. Hon'ble Supreme Court in Appaiya vs Andimuthu @ Thangapandi in Civil Appeal No. 14630 of 2015 decided on 20 September, 2023 held as under:-

*"In this context it is to be noted that certified copy issued thereunder is not a copy of the original document, but is a copy of the registration entry which is itself a copy of the original and is a public document under [Section 74\(2\)](#) of the Evidence Act and Sub-section (5) thereof, makes it admissible in evidence for proving the contents of its original. There is no case that foundation for letting in secondary evidence was not laid and as noted earlier, both the trial Court and the First Appellate Court found it admissible in evidence. Thus, the cumulative effect of the aforementioned sections of the [Evidence Act](#) and [Section 57\(5\)](#) of the Registration Act would make the certified copy of the sale deed No. 1209/1928 dated 27.08.1928 of SRO Andipatti, produced as Ext.A1 admissible in evidence for the purpose of proving the contents of the said original document."*

98. After perusing of aforesaid judgments and relevant provisions of Law to my mind presumption as to correctness and

truth is attached with public records documents Ex.DW-5/A to Ex.DW-5/S and lease deed Ex.DW-3/A which are further proved by DW-5 and DW-3 before the court. It is also settled law that such presumption of correctness of public records is rebuttable and affected party may rebut such presumption by adducing material oral or documentary evidence to show position contrary to the public records or to show that public records are prepared wrongly and illegally. It is true that the contents in the public record ought generally, to be accepted at their face value. But the presumption of correctness can apply only to genuine not forged or fraudulent contents. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the contents in the public record states but the contents are open to the attack that it was made fraudulently or surreptitiously.

99. In the present case, after appreciating the contents of public records documents Ex. DW-5/A to Ex. DW-5/S, Ex. DW-3/A and other public records placed on record, it appears that aforesaid contention of plaintiff is not sustainable in the eyes of law. Public records are contrary to the pleadings and contention of the plaintiff of not having knowledge of Will and supporting the defence of the defendant of having knowledge of plaintiff about the will and getting of benefits conferred in Will. There is nothing on record to show that the said contents in the public records are fictitious or are made fraudulently or for erroneous consideration or are incorrectly introduced by reason of ill-will or hostility towards plaintiff.

100. It is evident from the public records Ex. DW-5/A to Ex. DW-5/S and lease deed Ex. DW-3/A placed on file read with deposition of DW-5 and DW-3 that it is undisputed that the testator Ram Roop had given his building (which is bequeathed by him in Will to the plaintiff) to the postal Department on lease by

lease deed dated 12.12.2005 Ex. DR and therefore there was relation of landlord and tenant between the testator and postal department. From the perusal of the deposition of DW-5 Sarang Pani and Ex. DW-5/A to DW-5/S, Ex.DW-3/A lease deed read with other evidence on record, it is undisputed that Postal Department was earlier the tenant of testator vide lease deed Ex. DR for the building rented to the Postal Department for the running of the Post-Office at Amb. The plaintiff submitted notarized registered Will dated 08.09.2010 on 06.01.2014 in response of the communication sent to him by the postal department regarding submission of his documents of title upon the Post-Office building and for the change of the landlordship and for receiving of rent as prayed by plaintiff from postal department..

101. Upon the production of title of document i.e. notary attested copy of the registered Will by the plaintiff Rakesh Babu, it is duly proved that he had knowledge about due execution of the Will as well as contents of the Will and as such he has obtained the benefits bequeathed to him in the Will of the testator. Further, shows that plaintiff on 22.09.2014 executed a fresh lease deed with the Postal Department for the building upon the settlement of the enhance of rent vide Ex. DW-3/A lease deed. DW-5 further stated that testator in September, 2011 had also moved an application for enhancement of the rent and the same was pending for the final adjudication. On the one hand, the plaintiff is claiming mental incapacity of his father to execute the Will and on the other hand, he has received the benefits by presenting this Will. Ex. DW-5/H to Ex. DW-5/Q are the rent receipts issued by the Postal Department which shows that rent has been received by plaintiff from the Postal Department of the building bearing his signature upon the receipt before the filling of the suit. Defendant duly proved that plaintiff had knowledge of Will and has already taken the benefits of bequeathed movable and immovable property to him in Will by



redeeming/withdrawing FDRs and by got executing the lease deed of building rented to post-office in his favour and also received the rent from postal department of this building.

102. There is presumption of truth attached to these contents in view of aforesaid settled law. Therefore, I am of the opinion that plaintiff has failed to rebut aforesaid presumption and failed to prove his pleading and contention by adducing any material evidence that neither he had knowledge of Will nor has already taken the benefits of bequeathed movable and immovable property to him in Will by redeeming/withdrawing FDRs and by got executing the lease deed of building rented to post-office in his favour and also not received the rent from postal department of this building. Hon'ble Supreme Court of in **Bhagwat Sharan (Dead Thr. Lrs.) vs Purushotam** in CIVIL APPEAL NO. 6875 OF 2008 decided on 3 April, 2020 held as under:-

*“23. The other important document is the Will of Hari Ram (Exh. P-3). In this Will, Hari Ram gives details of the remaining 3 houses and mentions that these were owned by his father Madhav Prashad and that he (Hari Ram) has been doing business in the name of his father Munshi Madhav Prashad Agarwal. Out of the 6 houses, 3 had already been sold by Hari Ram and he has bequeathed the remaining 3 houses to various persons. It would be relevant to refer to the portion of the Will where Hari Ram states that he had 3 cousins Brij Mohan, Rameshwar Lal and Radha Krishan. Out of these, Radha Krishan died and was survived by his widow and 3 sons and they were living in the 2nd and 3<sup>rd</sup> floor in building No.2. Hari Ram bequeathed certain portions of the immovable property to the widow and children of Radha Krishan. 23. The other important document is the Will of Hari Ram (Exh. P-3). In this Will,*

*Hari Ram gives details of the remaining 3 houses and mentions that these were owned by his father Madhav Prashad and that he (Hari Ram) has been doing business in the name of his father Munshi Madhav Prashad Agarwal. Out of the 6 houses, 3 had already been sold by Hari Ram and he has bequeathed the remaining 3 houses to various persons. It would be relevant to refer to the portion of the Will where Hari Ram states that he had 3 cousins Brij Mohan, Rameshwar Lal and Radha Krishan. Out of these, Radha Krishan died and was survived by his widow and 3 sons and they were living in the 2nd and 3rd floor in building No.2. Hari Ram bequeathed certain portions of the immovable property to the widow and children of Radha Krishan. It would be pertinent to mention that the plaintiff Bhagwat Sharan is the son of Radha Krishan. He also bequeathed certain properties in favour of his cousins Brij Mohan and Rameshwar Lal.*

*24. It is also not disputed that the plaintiff and defendant nos. 1-3 herein filed suit for eviction of an occupant in which he claimed that the property had been bequeathed to him by Hari Ram. According to the defendants the plaintiff having accepted the Will of Hariram and having taken benefit of the same, cannot turn around and urge that the Will is not valid and that the entire property is a joint family property. The plaintiff and defendant nos. 1-3 by accepting the bequest under the Will elected to accept the will. It is trite law that a party cannot be permitted to approbate and reprobate at the same time. This principle is based on the principle of doctrine of election. In respect of Wills, this doctrine has been held to mean that a person who takes benefit of a portion of the Will cannot*

challenge the remaining portion of the Will. In *The Rajasthan State Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem Development Corporation Ltd. and Anr*<sup>11</sup>, this Court made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose"

25. The doctrine of election is a facet of law of estoppel. A party cannot blow hot and blow cold at the same time. Any party which takes advantage of any instrument must accept all that is mentioned in the said document. It would be apposite to refer to the treatise 'Equity-A course of lectures' by F.W. Maitland, Cambridge University, 1947, wherein the learned author succinctly described principle of election in the following terms:-

*"The doctrine of Election may be thus stated: That he who accepts a benefit under a deed or will or other instrument must adopt the whole contents of that instrument, must conform to all its provisions and renounce all rights that are inconsistent with it...."*

This view has been accepted to be the correct view in [\*Karam Kapahi and Ors. vs. Lal Chand Public Charitable Trust and Ors.\*](#)<sup>12</sup>. The plaintiff having elected to accept the Will of Hari Ram, by filing a suit for eviction of the tenant by claiming that the property had been bequeathed to him by Hari Ram, cannot now <sup>12</sup> (2010) 4 SCC 753 turn around and say that the averments made by Hari Ram that the property was his personal property, is incorrect."

103. Therefore, it is duly proved that the plaintiff has taken the benefits of the properties bequeathed to him by the testator under Will before the filing of the suit. So, by obtaining benefits of the properties bequeathed in the Will, the Plaintiff has admitted and acknowledged the legality and legitimacy of the Will Ex. DW-1/A. Therefore, he is stopped for filing of the present suit by his act and conduct and the aforesaid observations further shows that he has no cause of action against the defendant. Aforesaid observation further proves that the plaintiff has not approached to the Court with clean hands and suppressed material facts from the Court.

104. In view of my aforesaid observations, the Will dated 08.09.2010 Ex.DW-1/A is legal and valid in the eyes of law and the plaintiff has failed to show any suspicious circumstances surrounding the Will and Will is not outcome of fraud, misrepresentation and undue influence. The Plaintiff is not entitled for declaration and injunction as prayed.

105. In view of the fact that Will dated 08.09.2010 Ex. DW-1/A is valid in the eyes of law, now it is to be considered whether the counter claim of the plaintiff is liable to be allowed or dismissed. In view of the deposition of DW-2 Reena Kumari read with documents Ex. DW-2/A to D proved by her wherein Khasra No.3033 and 3034 was in ownership and in possession of Gurbax Singh and in Khasra No.3035 the plaintiff is shown as Gair Marusi and in view judgment Ex. D-14 which shows that the Gurbax Singh had obtained decree of permanent injunction against the plaintiff with respect to Khasra No.3035 and execution proceedings were also filed against the plaintiff, it is proved that plaintiff was neither owner nor in possession of these Khasra Numbers of suit land in counter claim. It is undisputed that Gurbax Singh had sold the suit land in counter claim to one Daulat Ram and this Daulat Ram had exchanged suit land in counter claim with the land of the testator. But surprisingly,

in the Jamabandi Ex. DW-2/D pertaining to suit land in counter claim, the plaintiff is shown owner in possession upon the suit land without any mutation or document of title. Even PW-5 plaintiff in his examination-in-chief by way of affidavit has also not deposed about the ownership and possession of plaintiff over the suit land in counter claim as Gair Marusi or otherwise and the deposition as well as pleadings of the defendant to this extent is remained unrebutted and unchallenged..

106. It is settled law that presumption as to correctness and truth is attached with revenue records. It is also settled law that such presumption of correctness of revenue records is rebuttable and affected party may rebut such presumption by adducing material oral or documentary evidence to show position contrary to the revenue records or to show that revenue records are prepared wrongly and illegally. The aforesaid Jamabandi showing plaintiff as owner in possession of suit land in counter claim is duly rebutted by the oral as well as documentary evidence. Plaintiff did not adduce any material evidence to show the source from which he obtained the ownership rights and also did not show the manner in which ownership rights had been obtained. Plaintiff did not adduce any oral or documentary evidence to prove ownership and possession in his favour. In view of aforesaid observations, I am of the opinion that Plaintiff should prove his right of ownership by adducing any independent evidence of source to corroborate the revenue entries in his favour. But he failed and therefore, entries of ownership and possession in revenue record can not help him to become owner of suit land in counter claim. Therefore, entries of suit land in revenue records in favour of Plaintiff are not sustainable in the eyes of law.

107. Since the testator was owner in possession of suit land in counter claim which is bequeathed in favour of the defendant and therefore the defendant is entitled to receive this suit land as per

the Will Ex. DW-1/A. Therefore, the defendant is entitled for the declaration well as injunction as prayed in respect of suit land in counter claim.

108. It is further counter claim of the defendant that the plaintiff by taking advantage of his position as second account holder of the FDRs has got transferred the entire amount of the FDRs in his bank account without the permission/authority/gift of the testator. The PW-5 plaintiff in his examination-in-chief by way of affidavit Ex. PW-5/A has also not deposed about the depositing any amount of these FDRs by the plaintiff Rakesh Babu and non transferring of the amount of FDRs to his bank account by the plaintiff and the deposition as well as pleadings of the defendant to this extent is remained un rebutted and unchallenged. The testator was first account holder and the plaintiff was the second account holder but neither there is any evidence on record that amount of FDRs was deposited by plaintiff Rakesh Babu nor this fact is deposed by plaintiff in support of his pleadings. Even no income tax return of plaintiff is placed on record to prove income or deposits made by him and there is nothing on record to show that the testator had gifted this amount of the FDRs to the plaintiff or otherwise had directed the bank or permission was granted to the bank to transfer the amount of FDRs in favour of plaintiff after his death.

109. Hon'ble HP High court in **Amar Kaur v. Shri Ram Singh And Others** 2009 SCC ONLINE HP 2398 held as under:-

*"In the case of accounts to be operated by either or survivor question has arisen before court as to who is to take the money on the demise of one among them. A learned single judge of this Court in [Padmanabhan Bhavani v. Govindan Bhargavi](#), 1974 KLT 822, went into the issue in detail. After an exhaustive survey of*

*all decisions on the point, the learned Single Judge formulated the following propositions.*

*(i) A deposit made by a Hindu of his money in the joint names of himself or his wife or any other person, on the terms that it is payable to either or survivor, does not on his death constitute a gift by him to the other person.*

*(ii) In such a case without any declaration of trust, there is a resulting trust in favour of the depositor in the absence of any contrary intention or unless it can be proved that an actual gift of the amount was intended.*

*(iii) The Principle of English Law that a gift to wife is presumed, where money belonging to the husband is deposited at a Bank in her name or where a deposit is made, in the joint names of both husband and wife has no application in India. In other words, there is no presumption in India of an intended advancement as there is in England.*

*(iv) The burden of proving a contrary intention or gift on the person who seeks to rebut the resulting trust in favour of the person who makes the deposit.*

*(v) This burden could be discharged either by proving that there was a specific gift or that the owner of the money had a general intention to benefit the claimant and that it was in pursuance of that intention that he made the deposit in the claimant's name or transferred the deposit to the joint names of himself and the claimant.*

*(vi) In the absence of such proof the amount under the deposit will form part of the onwer's estate on his death and will be partible among the heirs..”*

110. The deposition of PW-3, PW-4 and DW-8 duly proved that amount deposited in the FDRs was got transferred by the plaintiff in his bank accounts without any authority/gift from first account holder who deposited the amounts in FDR. As per the Will Ex. DW-1/A, amount of the FDR is divided equally in favour of the plaintiff and the defendant and therefore, defendant is entitled for the  $\frac{1}{2}$  share in the deposited amount of the FDRs as claimed. Although the defendant has also claimed 9% interest per annum from the date of filing of the counter claim till the date of realization of the amount upon the claimed FDRs amount. But to my mind, in the facts and circumstances of the case in absence of any agreement or statutory provisions, the claiming of 9% interest is excessive and unreasonable and therefore 6% interest per annum is sufficient to compensate the defendant/counter claimant adequately. Therefore, the issue No.1, to 3, 3-A, 4, 5, 7 to 10 are decided against the plaintiff/non-counter claimant and in favour of the defendant/counter claimant.

**Issue No.6:-**

111. In view my observations on the aforesaid issues, suit of the plaintiff is not maintainable, hence this issue is decided in favour of defendant and against the plaintiff.

**Issues No.11, 12 and 16:-**

112. In view of my findings on aforesaid issues No.9 and 10, the counter claim is maintainable and the counter claimant has cause of action and locus standi to file the counter claim against the non-counter claimant and therefore these issues are decided against the non-counter claimant.

**Issues No.13, 14, 15 and 17:-**



113. The onus to prove these issues was upon the non-counter claimant/plaintiff but he did not adduce any material, reliable and cogent evidence to prove these issues and therefore, these issues are decided against the non-counter claimant.

**Relief:**

114. In view of my findings on aforesaid issues, the suit of the plaintiff is dismissed, whereas, counter claim of defendant is decreed. Defendant/Counter claimant is declared owner in possession of 'suit land in counter claim' being the legatee/successor on the basis of Will dated 08.09.2010 Ex.DW-1/A and revenue entries reflecting the ownership and possession of the plaintiff/non counter claimant over the 'suit land in counter claim' are wrong, illegal, null and void. Plaintiff/non counter claimant is restrained from changing the nature and character, raising any sort of construction, exploiting any natural resources, cutting removing any trees, alienating or encumbering the 'suit land in counter claim' in any manner. The defendant/counter claimant is also entitled of recovery of Rs.16,72,301/- along with interest at the rate of 6% per annum from the date of the filing of the counter claim till realization of entire amount from the plaintiff/non counter claimant. No order as to cost. Decree sheet be prepared accordingly. The case file, after due completion, be consigned to records.

Announced in the open court on 23<sup>rd</sup> day of Sept., 2024.

/d.v./

(Niranjan Singh)  
Senior Civil Judge  
Court No.1, Amb, Distt. Una, H.P.

**Form-A****List of Witnesses**

| <b>Sr. No.</b> | <b>Name of Witness</b> | <b>Whether the witness<br/>of complainant or of Convict.</b> |
|----------------|------------------------|--------------------------------------------------------------|
| .....          |                        |                                                              |
| PW-1           | Balbir Singh           | Plaintiff witness                                            |
| PW-2           | Raman Kumar            | Plaintiff witness                                            |
| PW-3           | Umesh Kumar            | Plaintiff witness                                            |
| PW-4           | Ajit Singh             | Plaintiff witness                                            |
| PW-5           | Rahul Sood             | Plaintiff witness                                            |
| PW-5           | Kamla Devi             | Plaintiff witness                                            |
| PW-6           | Neeraj Kumar           | Plaintiff witness                                            |
| PW-7           | Rakesh Kumar           | Plaintiff witness                                            |
| PW-8           | Bhupinder Singh        | Plaintiff witness                                            |
| PW-9           | Parmod Singh           | Plaintiff witness                                            |
| PW-10          | Babita Sharma          | Plaintiff witness                                            |
| PW-11          | Aiyut Kumar            | Plaintiff witness                                            |
| PW-12          | Chander Bheed          | Plaintiff witness                                            |
| PW-13          | Kuldeep Chand          | Plaintiff witness                                            |
| PW-14          | B.S Chopra             | Plaintiff witness                                            |
| DW1            | Baldev Chand           | Defendant Witness                                            |
| DW2            | Reena Kumari           | Defendant Witness                                            |
| DW3            | Rajesh Kumar           | Defendant Witness                                            |
| DW4            | Ram Lal                | Defendant Witness                                            |
| DW5            | Sarang Paji            | Defendant Witness                                            |
| DW6            | Sarveen Bharti         | Defendant Witness                                            |
| DW6            | Gurmail Singh          | Defendant Witness                                            |
| DW7            | Chander Bhan           | Defendant Witness                                            |
| DW7            | Babit aSharma          | Defendant Witness                                            |
| DW8            | Narinder Singh         | Defendant Witness                                            |
| DW9            | Pankaj Kumar           | Defendant Witness                                            |
| DW10           | Khem Raj               | Defendant Witness                                            |
| DW11           | Rajan Babu             | Defendant Witness                                            |
| DW11           | Rajan Sood             | Defendant Witness                                            |
| .....          |                        |                                                              |

**Form-B****List of Exhibits.**

| <b>Exhibit/<br/>Mark/ No.</b> | <b>Date of Exhibit.</b> | <b>Description of<br/>Exhibits.</b>              |
|-------------------------------|-------------------------|--------------------------------------------------|
| PX-1 to PX5                   | 03.08.24                | Receipts                                         |
| PW1/A                         | -do-                    | Application form for telephone connection        |
| P14 to P16                    | 15.05.2020              | Copy of Jamabandi year 2009-10                   |
| P18                           | 15.05.23                | Application for incorporation dt. 1.8.14         |
| P19                           | -do-                    | Copy of Tehsildar Order                          |
| PW1/A                         | -do-                    | SBI Saving Bank Passbook                         |
| PW3/A                         | -do-                    | PNB Saving Bank Passbook                         |
| P4                            | 15.05.2023              | Application for transfer dt. 22.1.15             |
| P20                           | -do-                    | Copy of Order dt. 18.04.15                       |
| P1 to P11                     | -do-                    | Copy of Jamabandi year 2009-10 and 2005-06       |
| P12                           | -do-                    | Assessment Register                              |
| P13                           | -do-                    | Nakal Shajra                                     |
| PW2/B                         | -do-                    | Family Register                                  |
| PX1                           | ---                     | Photocopy of death certificate                   |
| PX3                           | 16.08.24                | Telephone Bill dt. 24.03.15                      |
| PX2                           | -do-                    | Photo copy of register deed, Writer Naresh Kumar |
| P-28                          | 7.5.24                  | Certified copy of order dt. 22.09.18             |
| P-29                          | -                       | Party Details                                    |
| PX-4 & 5                      | 16.8.24                 | Copy of Civil Suit No. 112-I-2008                |
| PX-6                          | -do-                    | Copy of Challan                                  |
| PX-6                          | -do-                    | Copy of POA                                      |
| PX-7                          | -do-                    | Copy of plaint                                   |
| PX-8&10                       | -do-                    | Copy of Statement                                |
| PX-9                          | -do-                    | Copy of Application                              |
| PX-11& 12                     | -do-                    | Copy of statement                                |
| PX-13                         | -do-                    | Copy of amended decree                           |
| PX-14                         | -do-                    | Copy of Written Statement                        |
| PX-15                         | -do-                    | Copy of statement of PW-1                        |
| PX-16                         | -do-                    | Copy of summons of Clerk                         |
| P17-                          | 15.05.2023              | Copy of order dt. 28.11.2013                     |
| P-Z4                          | 7.5.24                  | Certified copy of POA                            |
| P-Z5                          | 7.5.24                  | Amended Head Note                                |
| P-Z6                          | 7.5.24                  | Application for anticipatory bail                |
| P-Z6                          | -do-                    | Copy of plaint No. 60-I-2015                     |
| PZ-7                          | -do-                    | Amended compromise deed                          |
| PZ-9                          | -do-                    | Copy of plaint                                   |
| PZ-10                         | -do-                    | photocopy of List of witnesses                   |
| PX                            | -do-                    | Certified sale deed dt. 18.07.72                 |
| PZ                            | -do-                    | Certified sale deed dt. 11.10.72                 |

|                                         |            |                                          |
|-----------------------------------------|------------|------------------------------------------|
| PW-13/A                                 | 07.08.24   | Photocopy of Special Power of attorney   |
| PW-13/B                                 | -do-       | Copy of plaint.                          |
| PW-13/C                                 | -do-       | Copy of replication                      |
| PX                                      | 17.02.2023 | letter dt.7.1.2014                       |
| PW6/A                                   | 20.06.24   | Letter dt. 06.11.23 No. 607/RC           |
| P21 to 23                               | -do-       | Jamabandi year 2019-20                   |
| PW7/A                                   | 20.06.24   | Copy of Notification dt. 24.07.13        |
| PW10A                                   | 31.07.24   | Letter dt. 30.07.2024                    |
| P28                                     | ---        | Copy of application for partition        |
| Pz-7                                    | ---        | Jamabandi year 2019-20                   |
| PW14/A                                  | 10.08.24   | Discharge Summary                        |
| Mark-I                                  | 07.05.2024 | Cash Book                                |
| Mark A to Mark Z<br>& Mark Z-1 to Z-245 | -          | Executed/registered                      |
| D-1                                     | 7.5.24     | Copy of Sale deed No.806 dt. 16.7.1996   |
| D-2                                     | -do-       | Copy of Sale deed No.190 dt. 14.2.1996   |
| D-3                                     | -do-       | Copy of Sale deed No.191 dt. 14.2.1996   |
| D-4                                     | -do-       | Copy of Sale deed No.1152 dt. 12.9.1995  |
| D-5                                     | -do-       | Copy of Sale deed No.860 dt. 29.6.1995   |
| D-6                                     | -do-       | Copy of Sale deed No.812 dt. 16.7.1996   |
| D-7                                     | -do-       | Copy of Sale deed No.28 dt. 5.01.1995    |
| D-8                                     | -do-       | Copy of Sale deed No.864 dt. 26.07.1996  |
| D-9                                     | -do-       | Copy of Sale deed No.340 dt. 15.3.1999   |
| D-10                                    | -do-       | Copy of Sale deed No.1474 dt. 18.11.1999 |
| D-11                                    | -do-       | Copy of Sale deed No.181 dt. 6.5.2009    |
| D-13                                    | 9.5.2014   | Copy of plaint                           |
| D-14                                    | -do-       | Copy of Judgment dt. 6.6.1972            |
| D-15                                    | -do-       | Copy of decree sheet dt. 06.06.1972      |
| D-16                                    | -do-       | Copy of Zimni Order                      |
| D-17                                    | -do-       | Copy of execution petition               |
| D-18                                    | -do-       | Copy of notice 21 Rule 32 dt. 28.10.1772 |
| D-19                                    | -do-       | Copy of list property                    |
| D-20                                    | -do-       | Copy of warrant execution                |

|               |            |                                                    |
|---------------|------------|----------------------------------------------------|
| D-21          | -do-       | Copy of Registered exchange deed No.24/4.4.1973    |
| D-22          | -          | Copy of decree sheet                               |
| D-23          | -          | Account Statement                                  |
| D-23          | -          | Decree in appeal                                   |
| D-24          | 07.02.023  | Copy Jamabandi year 1913-14                        |
| D-25          | -          | Copy Jamabandi year 1956-57                        |
| D-27          | -          | Copy Jamabandi year 1965-66                        |
| D-28          | -          | Copy Jamabandi year 2001-02                        |
| D-29 to 31    | 09-.05.24  | Copy Jamabandi year 2014-15                        |
| D-32          | -do-       | Copy Aks Musabi                                    |
| D-33          | -do-       | Copy Jamabandi year 2014-15                        |
| D-34 to 36    | -do-       | Copy Jamabandi year 2013-14                        |
| D-37          | -do-       | Copy Aks Musabi                                    |
| DW-22         | 07.02.023  | Copy Jamabandi year 2009-10                        |
| DW1/A         | 10.08.23   | Will No. 348/2010 dt. 08.09.10                     |
| DW1/D         | 10.08.23   | Party Details                                      |
| DW-1/D        | -do-       | Copy Jamabandi year 1976-77                        |
| DW-2/A        | -do-       | Copy of Misal Hakiat 1971-72                       |
| DW-2/B        | -do-       | Copy of mutation 1976-77                           |
| DW-2/C        | -do-       | Copy of mutation 1976-77                           |
| DW-5/A        | 23.12.23   | letter dt. 24.7.2015                               |
| DW-5/B        | -do-       | Copy of RTI of Rajan Babu                          |
| DW-5/C        | -do-       | Copy of RTI of Rakesh Babu                         |
| DW-5/D        | -do-       | Copy of letter dt. 4.10.2013                       |
| DW-5/E        | -do-       | Copy of letter dt. 7.1.2014                        |
| DW-5/F        | -do-       | Copy of noting sheet                               |
| DW-5/G        | -do-       | Copy of letter of lease deed& noting dt. 15.1.2014 |
| DW-5/H        | -do-       | Copy of rent receipt                               |
| DW-5/J to 5/S | -do-       | Copy of rent receipts                              |
| DW/T          | -do-       | Copy of Letter 29.09.2023                          |
| DW-5/Q        | -do-       | letter dt. 17.10.2023                              |
| DW-6/A        | 07.02.23   | Copy of plaint                                     |
| DW-6/B        | 7.2.23     | Copy of judgment dt. 8.9.1982                      |
| DW-6/C        | -do-       | Copy of judgment dt. 13.10.1986                    |
| DW-6/D        | -          | Copy of Jamabandi year 1956-57                     |
| DW-8/A&PX1    | 7.2.24     | Original FDR dt. 23.03.2007                        |
| DW-8/B        | 17.02.23   | Copy of long term receipt                          |
| DW-8/C        | 7.2.24     | Letter to Manager dt. 26.4.2014                    |
| DW-8/D        | 07.02.24   | Application for conversion for joint FDR           |
| DW-8/E        | 07.02.24   | Copy of Death certificate                          |
| DW-DF         | 17.02.2023 | Original FDR 05.04.2007                            |
| DW-DF         | 17.02.2023 | Original FDR 08.11.10                              |
| DW-8/H        | -do-       | Certificate by KCC, Bank dt. 27.4.2010             |
| DW-8/F        | -          | Indemnity Bond                                     |
| DW-8/G        | -do-       | Transaction Enquiry                                |

|                |            |                                             |
|----------------|------------|---------------------------------------------|
| DY             | 6.4.23     | Copy of sale deed<br>No.1181/21.3.1973      |
| DW-7/A & 7/C,D | 7.2.23     | Income Tax Acknowledgment                   |
| DW-7/B & 7/D   | -          | Copy of Receipts of return year<br>2010-11  |
| DW-9/B         | 7.2.24     | Copy of deed writer register                |
| DW-12 & P29    | 9.5.24     | Copy of sale deed No. 2159 dt.<br>28.9.2012 |
| DW-12/A        | 9.5.24     | Copy of sale deed dt. 28.9.2012             |
| DB & DC        | 17.2.23    | Account Ledger Inquiry                      |
| DG& DH         | -do-       | Certificate dt. 5.5.2010                    |
| DR             | 6.4.23     | Copy of Rent deed No.1 dt.2.1.06            |
| DS             | 06.04.2023 | Copy of Agreement                           |
| D-38           | 09-05-24   | Copy of Mutation No. 901                    |
| DW3/A          | ---        | Copy of lease Deed No. 2333                 |
| DW3/B          | ---        | Signature                                   |
| DW3/E          | ---        | Site plan                                   |
| DW3/D          | ---        | Parties Details                             |
| D38            | ---        | Order dt. 30.01.2021                        |
| D39            | ---        | Order dt. 10.01.2020                        |
| D40            | ---        | Certified copy of Civil Tr. App.            |
| DD             | 17.02.2023 | Input Reference                             |
| DE             | -do-       | Account Statement                           |
| DN to DQ       | 06.04.23   | Photographs                                 |
| DW             | -do-       | Sale Deed No. 957                           |
| DW4/N & O      | -do-       | Signature                                   |
| DT             | -do-       | Original Aadhar Card                        |
| DJ             | -do-       | Photo                                       |
| D40            | -do-       | Jamabandi year 2000-01                      |
| DW7/A          | -do-       | Certified copy of plaint                    |
| DK             | -do-       | Identity Card                               |
| DW6/A          | 23.12.2023 | Certified copy of plaint                    |
| DW6/B          | -do-       | Certified copy of challan                   |
| D41&42         | 20.06.2024 | Copy of Order dt. 15.03.24                  |

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(Niranjan Singh)  
Senior Civil Judge  
Court No.1, Amb, Distt. Una, H.P.